

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



779  
**BRIEF AND APPENDIX FOR APPELLANT**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 20,413**

**ANN HULL, a/k/a ANN HASTINGS, *Appellant***

**v.**

**UNITED STATES OF AMERICA, *Appellee***

**On Appeal from the United States District Court  
for the District of Columbia**

**United States Court of Appeals**  
for the District of Columbia Circuit

FILED NOV 14 1966

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### **STATEMENT OF QUESTIONS PRESENTED**

(1) The question is whether the District Court has discretion to deny a request of a defendant for finding of facts specially when sitting without a jury.

(2) The question is whether a person who by letter or otherwise offers to advise an inventor on patentability and to prepare the necessary papers to apply for a patent but who does not offer to represent the inventor or indicate authorization or recognition by the United States Patent Office violates Section 33 of Title 35 of the United States Code.

## INDEX

	Page
Jurisdictional Statement .....	1
Statement of Case .....	2
Statutes Involved .....	2
Statement of Points .....	3
Summary of Argument .....	3
Argument .....	4
I. The Court Below Erred in Refusing To Make Specific Findings of Fact .....	4
A. This case is a test case particularly requiring specific findings of fact .....	4
B. Both the Government and Defendant requested specific findings of fact .....	5
C. The District Court has no discretion, and is required to make specific findings .....	5
II. The Court Below Erred in Apparently Holding That the Letters and Correspondence of Ann Hastings Held Appellant Out As Offering To Represent Inventors in Their Business Before the Patent Office .....	7
A. The Court below apparently relied on the find- ing that Appellant filed applications with the Patent Office .....	7
B. To represent an applicant requires more than merely physically filing a paper for another in the others name .....	8
C. The letters of Ann Hastings not only offer merely to deliver physically the applicant's application, but also specifically inform cus- tomers that Ann Hastings, unlike a patent attorney, will not represent them before the Patent Office .....	9

	Page
III. The Court Erred in Holding the Letters and Correspondence of Ann Hastings Held Appellant Out As "Qualified" As That Term Is Used in 35 U.S.C. 33 .....	11
A. To understand the proscription of 35 U.S.C. 33, it is necessary to refer to its legislative history .....	11
1. The language of 35 U.S.C. 33 is both ambiguous and potentially absurd .....	11
2. The ambiguity or absurdity of statutory language requires reference to the legislative history of the statute .....	12
B. The legislative history of 35 U.S.C. 33 clarifies that "qualified" is used with the sense of "authorized", and not with the sense of "know-how" .....	13
1. 35 U.S.C. 33 is merely a recodification of former 35 U.S.C. 11 (a) .....	13
2. The predecessor statute, 35 U.S.C. 11 (a), did not contain the ambiguity inherent in 35 U.S.C. 33, and spoke in clear terms of forbidding a non-recognized person from holding herself out as "authorized" .....	15
3. The legislative history of 35 U.S.C. 11 (a) indicates "authorized" was used advisedly in order that the thrust of the Statute would be only against persons who were falsely holding themselves out to be patent practitioners recognized as such by the Patent Office .....	16
C. The letters and correspondence of Ann Hastings admittedly tell of the ability of Ann Hastings and staff, but this is not sufficient to indicate any official approval or qualification .....	23
Conclusion .....	24

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Appendix.

## INDEX OF CITATIONS

CASES:	Page
<i>Bozar v. Central Penn. Quarry Stripping and Const. Co.</i> , 73 F. Supp. 803, (M.D. Pa., 1947) .....	12
<i>C.I.R. v. Acker</i> , 361 U.S. 87 (1959) .....	12
<i>N.L.R.B. v. Fruit &amp; Vegetable Packing &amp; Wholesale Local 760</i> , 337 U.S. 58 (1964) .....	13
<i>Sperry v. Florida</i> , 373 U.S. 379 (1963) .....	16
<i>Trusted Funds v. Dacey</i> , 160 F.2d 413 (— Cir. 1947) ..	12
<i>United States v. American Trucking</i> , 310 U.S. 534 (1940) .....	13
<i>United States v. Morris</i> , 263 F.2d 594 (7th Cir. 1959) ..	6
<i>Wilson v. United States</i> , — U.S. App. D.C. —, — F.2d — (No. 19502, Decided August 2, 1966) ..	13
STATUTES:	
Act of February, 1922, c. 58, § 3, 42 Stat. 390 (Formerly U.S.C., Title 35, § 11) .....	16, 23
Act of May 9, 1938, c. 188, 52 Stat. 342 (Formerly U.S.C. Title 35, § 11(a)) .....	4, 7, 8, 11, 15, 16, 19
Act of July 19, 1952, c. 950, § 1, 66 Stat. 795 (U.S.C. Title 35, § 31) .....	23
Act of July 19, 1952, c. 950, § 1, 66 Stat. 796 (U.S.C. Title 35, § 33) .....	2, 3, 4, 7, 8, 11, 12, 13, 15, 16, 24
RULES AND REGULATIONS:	
Federal Rules of Criminal Procedure, Rule 23(c) ..	3, 4, 5, 6
Federal Rules of Civil Procedure, Rule 49 .....	5
TREATIES:	
Moore's Federal Practice—Criminal Rules Vol. 8, Par. 23.05 (1955) .....	6
MISCELLANEOUS:	
Congressional Record, Volume 81 (1937) .....	18, 21
Congressional Record, Volume 83 (1938) .....	22
Congressional Record, Volume 98 (1952) .....	15
Senate Report No. 462, 75th Congress, 1st Session (1937) .....	21

	Page
Senate Report No. 1979, 82nd Congress, 2nd Session (1952) .....	14
H.R. Report No. 1923, 82nd Congress, 2nd Session (1952) .....	13, 14
Hearings on H.R. 5811 before the Committee on Patents, 69th Congress, 1st Session (1926) .....	16, 17
Hearings on H.R. 6117 before the Committee on Patents, 74th Congress, 1st Session (1935) .....	19
Hearings on H.R. 3760 before the Committee on the Judiciary, 82nd Congress, 1st Session (1951) ....	13, 14
United States Code, Congress and Administrative News, 82nd Congress, 2nd Session, Vol. 2 (1952)	14

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ANN HULL, a/k/a ANN HASTINGS, *Appellant*

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UNITED STATES OF AMERICA, *Appellee*

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On Appeal from the United States District Court  
for the District of Columbia

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**BRIEF FOR APPELLANT**

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**JURISDICTIONAL STATEMENT**

This is an appeal of a judgment of conviction entered by the United States District Court for the District of Columbia on July 7, 1966, and from a refusal by that Court

on June 2, 1966, to find facts specially. This Court has jurisdiction of the appeal pursuant to 28 U.S.C. 1291.

### STATEMENT OF CASE

This is an appeal from a conviction of Appellant of eleven counts of violating Section 33, Title 35, United States Code, and from the refusal of the District Court, after request and sitting without jury, to find the facts specially.

For a number of years, Appellant has openly been engaged in and has offered to the public a service of assisting inventors in the preparation of their applications for patents. Each of the counts of the Indictment below is based upon one of various letters sent by her, or with her permission, to her customers.

Although Section 33 of Title 35 and its predecessor have been operational since 1938, no interpretation has been made of it. The outcome of the case carries with it a particular significance because it affects the rights of general attorneys (those not registered with the Patent Office), draftsmen, engineers and others who might deal with patent matters, and, especially, the right of an inventor to represent himself in applying for a United States Patent.

### STATUTES INVOLVED

UNAUTHORIZED REPRESENTATION AS PRACTITIONER. Whoever not being recognized to practice before the Patent Office holds himself out or permits himself to be held out so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense. (Act of July 19, 1952, c. 950, 66 Stat. 796, U.S.C., Title 35 § 33).

### STATEMENT OF POINTS

1. The Court erred in refusing to make specific findings of fact.

2. The Court erred in holding that the letters and correspondence held her out as offering to represent inventors in their business before the Patent Office.

3. The Court erred in holding the letters and correspondence held her out as recognized or qualified in any manner by the Patent Office.

### SUMMARY OF ARGUMENT

1. Since this case is a test case, the District Court should have made findings of fact specially in order that the case would be clear on appeal. Moreover, Rule 23(c) of the Federal Rules of Criminal Procedure would appear to require the District Court to make such findings of fact.

2. Relying on the statements from the Bench in the absence of special findings, it would appear that the District Court held the evidence sufficient to constitute an offer by Appellant to represent an applicant before the Patent Office, or to prosecute the application. The service offered by Appellant is not sufficient to constitute such a representation.

3. The relevant proscription of 35 U.S.C. 33 is against a person not registered with the Patent Office who holds himself out as "qualified to prepare or prosecute applications for patent". The word "qualified" is used in the Statute in the sense of authorized or entitled, and not in the sense of mental or physical ability or know-how. Since what is proscribed is the false holding out of some type of official approval and not simply ability, the Appellant is not covered by the Statute.

## ARGUMENT

### I. THE COURT BELOW ERRED IN REFUSING TO MAKE SPECIFIC FINDINGS OF FACT.

*A. This case is a test case particularly requiring specific findings of fact.*

*B. Both the Government and Defendant requested specific findings of fact.*

*C. The District Court has no discretion, and is required to make specific findings.*

\* \* \* \* \*

**A. This case is a test case specifically requiring specific findings of fact.**

The proscription of activities embodied in 35 U.S.C. 33 (Act of July 19, 1952, c. 950, § 1, 66 Stat. 796), for the violation of which Defendant presently stands convicted, was first enacted by Congress in 1938. (See pp. 16-19, *infra*). Yet this is the first case to be brought under 35 U.S.C. 33, or its predecessor, 35 U.S.C. 11 (a) (Act of May 9, 1938, c. 188, 52 Stat. 342.) The case is, as the Government acknowledged in its Response to Request for Findings of Fact Specially, "the first prosecution to arise under 35 U.S.C. 33."<sup>1</sup>

Since this case is one of first impression, there are no settled guidelines or definitions as to what constitutes the elements of violation of the Code. A general finding, standing alone in this context, does not permit clear and precise discussion of the case, for it remains unknown which part of the proffered evidence, and most importantly, the permissible implications of the proffered evidence, was relied upon.

One purpose served by Rule 23 (c) of the Federal Rules of Criminal Procedure, which requires a District Court to

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<sup>1</sup> In its statement to the Press, the Government emphasized that this was a "test" case. Washington Post, May 19, 1966.

find the facts specially upon request when sitting without a jury, is to clarify a case for appeal. When a jury is present, the jury, a group untrained in concise statement of relevant facts, is not compelled to find specially the facts (See: Rule 49, F.R. Civ. Pro.) but the factual elements which they must find for conviction are set forth by the Court explicitly in the Instructions to the Jury. Without Jury Instructions there is no such listing of elemental factual requirements nor reason for protecting the unskilled draftsman so the direct method of achieving clarity is provided in Rule 23 (c), requiring a setting forth of the elemental facts found.

**B. Both Government and Defendant requested specific findings of fact.**

Pursuant to Rule 23 (c) of the Federal Rules of Criminal Procedure, Defendant by formal motion asked the District Court to find the facts specially. The Government, in its response to this motion, agreed with Defendant:

The Government believes that the Court should, at defendant's request, find the facts specially pursuant to Rule 23 (c) of the Federal Rules of Criminal Procedure.

Furthermore, the Government recognized that "... findings of fact are desirable in this case ...."

**C. The District Court has no discretion and is required to make specific findings.**

Rule 23 (c) of the Federal Rules of Criminal Procedure provides:

*Trial without a Jury.* In a case tried without a jury, the Court shall make a general finding and shall in addition on request find the facts specially.

The instant case was tried without a jury. The Defendant formally requested a finding of the facts specially. The District Court summarily denied defendant's request.

The language of Rule 23 (c) is that the Court, upon request, "shall . . . find the facts specially". The word "shall" is directive rather than permissive. It leaves no discretion in the District Court. Although the question does not seem to have arisen in this jurisdiction, the opinions of other circuits support a mandatory rather than permissive reading of Rule 23 (c). *United States v. Morris*, 263 F. 2d 594 (7th Cir., 1959), see Moore's *Federal Practice, Criminal Rules*, Vol. 8, Par. 23.05 (1955).

**II. THE COURT BELOW ERRED IN APPARENTLY HOLDING THAT THE LETTERS AND CORRESPONDENCE OF ANN HASTINGS HELD APPELLANT OUT AS OFFERING TO REPRESENT INVENTORS IN THEIR BUSINESS BEFORE THE PATENT OFFICE.**

*A. The Court below apparently relied on the finding that Appellant filed applications with the Patent Office.*

*B. To hold oneself out as qualified to prosecute an application or represent an applicant requires more than merely physically filing a paper for another in the others name.*

*C. The letters of Ann Hastings not only offer merely to deliver physically the applicant's application, but also specifically inform customers that Ann Hastings, unlike a patent attorney, will not represent them before the Patent Office.*

. . . . .

**A. The Court below apparently relied on a finding that Appellant filed applications with the Patent Office.**

Since no formal findings were made by the District Court, we are limited to reliance upon comment from the Bench as to the basis of decision. In his oral opinion, the Court, in a relatively lengthy reference to former 35 U.S.C. 11 (a) (Act of May 9, 1938, c. 188, 52 Stat. 342), the predecessor of 35 U.S.C. 33 (Act of July 19, 1952, c. 950, § 1, 66 Stat. 796), excluded appellant from all prohibited activity (Tr. p. 125) except "to hold himself out . . . as authorized to represent applicants for patent in their business before the Patent Office." (Tr. p. 124). The Court then continued with a finding that appellant "prepared the applications and filed them with the Patent Office." (Tr. p. 126). There immediately followed this exchange. (Tr. p. 126).

**THE DEFENDANT:** Your Honor, may I make a statement?

**THE COURT:** Yes.

**THE DEFENDANT:** I never represented clients before the Patent Office. He is representing himself.

THE COURT: You filed the application! That is enough.<sup>2</sup>

In short, the Court below indicated that it felt the filing of applications alone is sufficient to constitute a prosecution of patent applications, or a representation of an applicant in the applicant's business with the Patent Office. The proscription of 35 U.S.C. 33 is placed in a parallel prohibition to hold oneself out as either qualified to prepare or qualified to prosecute. The juxtaposition by the Court of its finding that appellant "prepared the applications", and that she "filed them" would indicate a holding that she prosecuted patent applications.

**B. To hold oneself out as qualified to prosecute an application or represent an applicant requires more than merely physically filing a paper for another in the others name.**

Whether the words of 35 U.S.C. 33 or of former 35 U.S.C. 11 (a) be used, more than a mere offer to deliver physically a paper to the Patent Office is necessary to hold oneself out as authorized or qualified or even able to represent an applicant or prosecute his application. To so hold would be to require a pro se inventor, or a registered patent attorney, to physically deliver the papers himself. Carried to absurdity, even the Post Office would be violating the law for offering to deliver the application.

Rather, what is proscribed for a non-registered person is to offer to act on behalf of another in a representative, rather than messenger capacity. As put by Mr. M. W. Cochran, Law Examiner, Office of Solicitor, Patent Office, who testified for the Government, the representative, who is prosecuting a patent application, confers with the examiner and enters the case in an attorney capacity. (Tr. pp.

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<sup>2</sup> No point is made here that the Court apparently relied on what the appellant *did* rather than what she held herself out as being or doing, since the letters do offer to file the applications. However, this is another indication of the necessity of findings of fact specially.

32, 33). One who simply delivers the paper does not thereby represent the inventor nor prosecute the application any more than does a secretary or law clerk of a lawyer practice law by delivering a pleading to the Clerk of Court. And one who offers to file the paper no more holds herself out as representing the inventor or prosecuting the application.

**C. The letters of Ann Hastings not only offer merely to physically deliver the applicant's application, but also specifically inform customers that Ann Hastings, unlike a patent attorney, will not represent them before the Patent Office.**

The only letter of the series sent by Ann Hastings which mentions filing is that shown on pages 8, 18, 28, 41 and 46 of the Appendix. It says simply "Upon return of the papers, I will *deliver* your application to the Patent Office for filing". (Emphasis added).

What is offered is that Ann Hastings, from an office located only a few blocks from the Patent Office will deliver them to the proper file clerk at the Patent Office. This personal messenger service permits the inventor to immediately know exactly when the application was filed, with the concomitant protection against copy, so that he may begin marketing his invention. To await the three weeks it takes for the Patent Office to acknowledge receipt of application would be an economic inconvenience. (See Appendix, pp. 18-19, 28, 42).

Moreover, the letters of Ann Hastings repeatedly deny any representative capacity or attorney-like prosecution. In the very first letter to a prospective customer, Ann Hastings says:

Patent applications may be filed *through* a registered patent attorney, or if the inventor prefers, he may *file his own* application, showing no attorney of record. When applications are filed by an attorney, the Patent

Office directs all communications regarding the application to the attorney—not to the inventor. If the inventor files his own case direct, the Patent Office will deal *directly* with him and he will know at all times the exact status of his application.

Should you decide on the *latter* procedure, I will be glad to handle the preparation of your official papers. (Emphasis added).

(See Appendix pp. 1-2, 8-9, 11-12, 34-35.)

Substantiating this offer of Ann Hastings to act in a non-representative capacity, is the testimony of the third witness called by the Government, Mrs. Diane Frankouski, former secretary to appellant. At page 52 of the Transcript, the following appears:

THE COURT: Who had the final say as to the application?

THE WITNESS: The inventor.

**III. THE COURT ERRED IN HOLDING THE LETTERS AND CORRESPONDENCE OF ANN HASTINGS HELD APPELLANT OUT AS "QUALIFIED" AS THAT TERM IS USED IN 35 U.S.C. 33.**

(A) *To understand the proscription of 35 U.S.C. 33, it is necessary to refer to its legislative history.*

1. *The language of 35 U.S.C. 33 is both ambiguous and potentially absurd.*
2. *The ambiguity or absurdity of statutory language requires reference to the legislative history of the statute.*

(B) *The legislative history of 35 U.S.C. 33 clarifies that "qualified" is used with the sense of "authorized," and not with the sense of "know-how."*

1. *35 U.S.C. 33 is merely a recodification of former 35 U.S.C. 11 (a).*
2. *The predecessor statute, 35 U.S.C. 11 (a), did not contain the ambiguity inherent in 35 U.S.C. 33, and spoke in clear terms of forbidding a non-recognized person from holding herself out as "authorized."*
3. *The legislative history of 35 U.S.C. 11 (a) indicates "authorized" was used advisedly in order that the thrust of the Statute would be only against persons who were falsely holding themselves out to be patent practitioners recognized as such by the Patent Office.*

(C) *The letters and correspondence of Ann Hastings admittedly tell of the ability of Ann Hastings and staff, but this is not sufficient to indicate any official approval or qualification.*

\* \* \* \* \*

**A. To understand the proscription of 35 U.S.C. 33 it is necessary to refer to its legislative history.**

1. **The language of 35 U.S.C. 33 is both ambiguous and potentially**  
**absurd.**

The language of 35 U.S.C. 33 (Act of July 19, 1952, c. 950, § 1, 66 Stat. 796) relevant here is ambiguous in that the key word "qualified" can be used either in the sense

of qualified by training or in the sense of qualified by approval of some regulatory agency. *Trusteed Funds v. Dacey*, 160 F. 2d 413 (1st Cir., 1947); *Bozar v. Central Penn. Quarry Stripping and Const. Co.*, 73 F. Supp. 803, 811 (M.D. Pa., 1947). Even the basic Black's Law Dictionary defines "qualified" as:

Adapted; fitted; entitled; susceptible; capable; competent; fitting; possessing legal power or capacity . . . Applied to one who has taken legal steps to prepare himself for an appointment.

As germane here, the word "qualified" can mean either "authorized or approved" on the one hand or "know-how or ability" on the other.

The potential absurdity of interpreting "qualified" in the statute to read "able" is that it would bar every non-registered attorney, draftsman, engineer and technician from assisting inventors in the preparation of a patent application.<sup>3</sup> It would compel every inventor to retain a registered patent attorney or agent—a result at plain variance with the intent of Congress, as shown by the legislative history. (See *infra* III B, pp. 13-21.)

**2. The ambiguity or absurdity of statutory language requires reference to the legislative history of the statute.**

A penal statute, such as 35 U.S.C. 33, must be interpreted strictly. *C.I.R. v. Acker*, 361 U.S. 87 (1959). Primary in determining what is the impact of a statute is the intent

<sup>3</sup> In its Memorandum in Response to Defendant's Memorandum of Law submitted to the District Court before trial, the Government attempts to avoid this result by arguing that an attorney or draftsman would not be "holding out" their "qualifications", because they would not be advertising (no evidence was presented as to any advertisement by Appellant of her qualifications) or indicating their abilities by letter. Since attorneys and draftsmen generally do hold out their abilities by letter and other forms of communication, the potential impact of the statute incorrectly interpreted, remains upon them. If a draftsman were asked whether he could prepare the application drawings, he would, under the government's theory, be required to remain silent. The absurdity remains.

of the legislature in drafting and passing the act. *N.L.R.B. v. Fruit & Vegetable Packing & Wholesale Local 760*, 377 U.S. 58 (1964). The legislative history of an act, especially where, as here, it is rich and conclusive, is a significant tool in the interpretation of an act. *Wilson v. United States*, — U.S. App. D.C. —, — F. 2d —. (No. 19502, Decided Aug. 2, 1966, at pp. 5-6). Especially where the words of the statute are ambiguous or could lead to an absurd result, the legislative history is a proper source of edification in interpreting the Act. *United States v. American Trucking*, 310 U.S. 534 (1940); *N.L.R.B. v. Fruit & Vegetable Packing & Wholesale Local 760*, 377 U.S. 58 (1964).

**B. The legislative history of 35 U.S.C. 33 clarifies that "qualified" is used therein with the sense of "authorized", and not with the sense of "know-how".**

**1. 35 U.S.C. 33 is merely a recodification of former 35 U.S.C. 11(a).**

Section 33 of Title 35, United States Code came into being as a part of the general revision and recodification of the Patent laws which took place in 1952. Report of the Committee on the Judiciary, 82nd Cong., 2d Sess., H.R. Report No. 1923, 1 (1952).

The only major substantive changes made in the Patent laws regarded Sections 103 and 271, which are not of concern here. *Ibid.*, p. 5. Regarding Section 33, the Revisor's Note says simply:

Based on Title 35 U.S.C. 1946 Ed., Section 11a (May 9, 1938, Ch. 188, 52 Stat. 342). This is a Criminal Statute. The language has been considerably simplified and the upper limit of the penalty is increased: (35 U.S.C.A. 33).

Testifying in explanation of the new Unauthorized Practice section, Mr. J. P. Frederico, Examiner in Chief, U. S. Patent Office, stated:

"There has been no change of substance in these sections (referring to 31, 32 and 33), except in the third

of this group which is a criminal provision for unauthorized practice. The language has been considerably simplified, and the maximum fine has been raised from \$100 to \$1000. Hearings before the Committee on the Judiciary on H.R. 3760, 82nd Cong., 1st Sess., 37 (1951).

And in his Commentary to the Act of 1952 (35 U.S.C. at page 14), Mr. Frederico re-iterates:

Section 33 is a considerable condensation and simplification of the old statute prohibiting unauthorized representation as a practitioner before the Patent Office.

Mr. Charles J. Zinn, Law Revision Counsel, House Committee on the Judiciary, in his commentary appearing in U. S. Code, Congress and Adm. News, 82nd Congress, 2nd Session, Vol. 2 (1952) explained:

The three sections comprising Chapter 3 contain only one important change in substantive law. The criminal fine for unauthorized representation as a practitioner before the Patent Office has been increased to a maximum of \$1000 from the former limit of \$500.

The Committee Reports accompanying the bill which became 35 U.S.C. 33, also emphasized the continuity between former Section 11(a) and the proposed Section 33:

The next group, sections 31, 32, and 33 relate to practice before the Patent Office. In them the language of the prior statutes has been rearranged and divided into several sections. There has been no change in substance in these sections, except in the third of this group which is a criminal provision for an authorized practice. The language has been considerably simplified, and the maximum fine has been increased from \$100 to \$1000. H.R. Report No. 1923, 82nd Cong., 2d Sess., 6; Sen. Report No. 1979, 82nd Cong., 2d Sess. 4-5 (1952).

The proposal was not debated in the House, and when it came to the floor of the Senate, discussion was opened by

Senator Sattonstall: "Does the bill change the law in any way or only codify the present patent laws." Discussion was immediately quieted by Senator McCarran: "It codifies the present patent laws. It passed the House, and it was approved by the Judiciary Committee of the Senate." 98 Cong. Rec. 9233 (1952).

The singular conclusion to be drawn from the foregoing history is that Section 33 was a simplification, a re-writing, and a codification of Section 11(a), and that no substantive change was intended, except for the increase in the fine that might be imposed.

2. The predecessor statute, 35 U.S.C. 11(a), did not contain the ambiguity inherent in 35 U.S.C. 33, and spoke in clear terms of forbidding a non-recognized person from holding herself out as "authorized".

Section 33, provides:

UNAUTHORIZED REPRESENTATION AS PRACTITIONER. *Whoever, not being recognized to practice before the Patent Office holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense. (Act of July 19, 1952, c. 950, 66 Stat. 796). (Emphasis added)*

Section 11(a), provided:

SAME: UNAUTHORIZED REPRESENTATION AS PRACTITIONER: PENALTY. It shall be unlawful for *any person who has not been duly recognized to practice before the United States Patent Office* in accordance with the provisions of Section 11 of this title and the rules of the Patent Office *to hold himself out or permit himself to be held out as a patent solicitor, patent agent, or patent attorney, or otherwise in any manner hold himself out, either directly or indirectly, as authorized to represent applicants for patent in their business before the Patent Office,* and it shall be unlawful for any person who has, under the authority of Section 11 of this title been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold

himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office or any division thereof; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine of not less than \$50 and not exceeding \$500. (Act of May 9, 1938, c. 188, 52 Stat. 342.) (Emphasis added).

3. The legislative history of 35 U.S.C. 11(a) indicates "authorized" was used advisedly in order that the thrust of the Statute would be only against persons who were falsely holding themselves out to be patent practitioners recognized as such by the Patent Office.

"Disclosure", said the Supreme Court in *Sperry v. Florida*, 373 U.S. 379, 393 (1963), "that persons were falsely holding themselves out to be registered patent practitioners led in 1938 to the enactment of legislation making such misrepresentation a criminal offense". That legislation was "Act of May, 1938, 52 Stat. 342; now 66 Stat. 796, 35 U.S.C. § 33". 373 U.S. 379, 393 (n. 25) (1963).

To appreciate this statement, a brief history of the regulation of practice by the Patent Office is necessary. By Act of July 4, 1836, Congress established the present system of granting patents. To obtain a patent, an inventor was required to file a specification, drawing and, where applicable, a model. Anyone could act as an attorney for an inventor, representing his interests before the Patent Office. In 1922, Congress authorized the Commissioner of Patents to register patent attorneys. (Act of February, 1922, Ch. 58, § 3, 42 Stat. 390)

Some people, though, were holding themselves out as having the know-how to prepare for inventors patent applications. Others, more bold, were, even though unregistered, holding themselves out as authorized by the Patent Office to conduct business before that Office. (See generally Hearings on H.R. 5811 before the House Committee on Patents, 69th Cong., 1st Sess. (1926). The Office sought sanction on both these groups, and in 1924, there began

to be submitted to Congress the so-called "Crampton bills", named for Representative Louis C. Crampton.

In January, 1924, Representative Crampton submitted a bill which provided:

It shall be unlawful for any person who has not complied with the rules and regulations of the Commissioner of Patents governing the recognition of agents, attorneys, or other persons representing applicants . . . in the United States Patent Office . . . to hold himself out to be or assume to be a patent agent, patent attorney or counselor with respect to patent applications or in any manner convey the impression that he . . . has, owns, conducts, or maintains an office of any kind for preparing, prosecuting, or advising with respect to applications for patents, or for compensation to act or practice as a patent agent, patent attorney or counselor with respect to matters before the United States Patent Office, or to habitually aid or assist, directly or indirectly in the preparation, presentation, or prosecution of any patent application . . . H.R. 5760, 68th Congress, 1st Sess. (1942).

The bill failed.

In 1925, 26, 27, 29, 32,<sup>4</sup> an identical or similar bill was introduced, and failed. To say exactly what impact a bill's failure has, or for what reasons it failed is a quixotic task. Certainly, however, one of the objections to the Crampton bills was that they were too broad. Repeatedly attacks were made that they would include in their proscription non-registered lawyers, draftsmen, technicians and engineers. Hearings on H.R. 5811 before the House Committee on Patents, 69th Cong. 1st Sess. (1926). The Patent Office attempted apparently in vain to placate critics by saying the sole thrust of the bills was to prevent

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<sup>4</sup> H.R. 5790, 68th Cong., 1st Session (Jan. 19, 1924); H.R. 5811, 69th Cong., 1st Session (Dec. 17, 1925); H.R. 10735, 69th Cong., 1st Session (March 26, 1926); H.R. 5527, 70th Cong., 1st Session (Dec. 5, 1927); H.R. 699, 71st Cong., 1st Session (April 16, 1929); H.R. 6677, 72nd Cong., 1st Session (Jan. 4, 1932).

non-registered persons from indicating that they were registered. Ibid., at 4, 5. See also 81 Cong. Rec. 4630 (1937).

In 1935, the proposal was made which ultimately was to be adopted. The Lanham Bill (H.R. 6117, 74th Cong. 1st Sess. Feb. 22, 1935) did not seek to outlaw the range of activities covered by the old Crampton Bills. It labeled as unlawful for:

any person who has not been duly recognized to practice before the United States Patent Office . . . to hold himself out or permit himself to be held out as a patent solicitor, patent agent, or patent attorney, or otherwise in any manner hold himself out . . . as authorized to represent applicants in their business before the Patent Office.

In the hearings on the Bill, the Commissioner of Patents, Conway P. Coe, testified in favor of and to explain the thrust of the Bill.

*Mr. Coe.* The purpose of this bill is to prevent unauthorized practice before the Patent Office. At present, numerous persons who have either been disbarred from practicing before the Patent Office or who have never been enrolled to practice there before, advertise themselves as patent attorneys, solicit patent business, and otherwise engage in the unauthorized practice before the Patent Office. At present, there is no law to control this fraud and deception.

This bill is considered by the officials of the Patent Office as one of the utmost importance. The bill is not as sweeping as the familiar Crampton bills often introduced into Congress heretofore. However, it has the great advantage of clarity and brevity and will be of tremendous benefit to the Patent Office and the patent system. The bill is founded, in the main, upon the British law on the same subject, which I have been advised has been most effective in its operation.

*The Chairman.* Fundamentally, what does the bill provide that we do not have in the present law?

*Mr. Coe.* The bill prevents anyone from holding himself out, or permitting himself to be held out, as a patent solicitor, patent agent, or patent attorney, unless he has been duly recognized to practice before the United States Patent Office. It makes it unlawful, a misdemeanor, and imposes a fine upon anyone who practices in violation of this provision.

*The Chairman.* In other words, anyone that imposes upon any community by representing that he is a registered patent lawyer or agent, who has not qualified before the patent bar, is guilty of a misdemeanor? (Hearings on H.R. 6117 before the Committee on Patents, 74th Cong. 1st Sess. at 11 & 12 (May 24, 1935))

In 1935, the Lanham bill did not pass. But in 1937, an almost identical bill was introduced by both Congressman Lanham and Senator McAdoo (H.R. 1654, 75th Cong. 1st Sess., Jan. 5, 1937; S. 477, 75th Cong. 1st Sess. Jan. 6, 1937) There was, in these bills, added that a disbarred patent attorney could hold himself out as entitled to *neither represent* persons in their business before the Patent Office *no to assist* persons in their business before the office. The limit of legal activity of a person simply not registered was *not so severely drawn*. No mention of *assisting* was made. What was proscribed continued to be a holding out as "*authorized to represent applicants*". In 1938, S. 477 was adopted and became 35 U.S.C. 11 (a), (52 Stat. 342) the predecessor of 35 U.S.C. 33.

No hearings were held on S. 477 which became 35 U.S.C. 11 (a), but when the bill was reported for vote a colloquy occurred between Senator McAdoo and Senator King, who had opposed the Crampton Bills. Senator King requested an explanation of the bill: "Several years ago a similar bill was introduced and defeated . . . I should like to inquire . . . whether this bill is broader or narrower in its scope."

*Mr. McAdoo.* Mr. President, it is not as broad as the bill to which the Senator has referred. The brief report of the Committee, I think, states more explicitly, and perhaps more lucidly that I myself could, what the bill contemplates.

The measure merely seeks to prevent persons who are permitted to practice before the Patent Office, or persons who have been disbarred from practice before that Office, from holding themselves out as patent attorneys and as able to assist people applying for patents. Great abuse has arisen from the fact that many people are induced by so-called patent attorneys to put their cases in their hands when the so-called attorneys have no authority to practice before the Patent Office. The sole object of the bill is to prevent such abuses.

*Mr. King.* Mr. President, will the Senator yield?

*Mr. McAdoo.* I yield.

*Mr. King.* The bill to which the Senator referred, which was defeated, was broad enough, as I recall—though it has been 4 or 5 years since it was under consideration, to penalize an individual who was a mere draftsman living, for instance, in Los Angeles, or some remote part of the United States, who was importuned because of his ability as an engineer or as a draftsman, to help an inventor of a mechanical device to draw the plans and designs required by the Patent Office.

I recall that a number of instances were brought to the attention of Members of the Senate of penalties being inflicted upon men who were rendering valuable service in remote parts of the United States where there were no patent attorneys. The inventor of some mechanical device, being unable to come to Washington and hire a lawyer, utilized the best ability he could find. Those men were penalized and prevented from carrying on that work, which was not so much the work of an attorney as of a draftsman or engineer. I was wondering whether this bill went as far as that.

*Mr. McAdoo.* No; it does not go that far. I understand the point the Senator makes, and we interro-

gated the Commissioner of Patents, who came before the committee, particularly about that very point, and I think it is perfectly clear from the bill that it does not go as far as the Senator thinks it does. I believe the measure is a perfectly appropriate one, and ought to be passed. 81 Congressional Record 4630 (1937)

The Committee report to which Senator McAdoo referred is indeed brief. It consisted almost entirely of a reprint of a letter from Commissioner of Patents, Conway Coe, who said therein:

The purpose of the bill is to prevent unauthorized practice before the Patent Office. At present, numerous persons who have either been disbarred from practicing before the Patent Office or who have never been enrolled to practice therebefore, advertise themselves as patent attorneys, solicit patent business, and otherwise engage in unauthorized practice before the Patent Office. At present, there is no law to control this fraud and deception.

This bill is considered by the officials of the Patent Office as one of the utmost importance. The bill is not as sweeping as the familiar Crampton bill often introduced into Congress heretofore. Senate Report No. 462, 75th Cong. 1st Sess. (1937)

From the colloquy of Senators McAdoo and King there can be no doubt that the proscription drafted and passed was not to be as broad as it could have been, and was to be more narrow than what had previously been proposed. With no hesitation the Senate was assured that persons assisting an inventor were not within the Act. On the other hand, persons holding themselves out as recognized patent attorneys were the target of the Act.

The McAdoo bill was adopted by the House Committee on Patents and brought to the floor by Mr. Lanham, as a substitute for his own, substantially identical, bill. The accompanying report was akin to that in the Senate. But the

floor statement of Mr. Lanham in explaining the bill to the House is even more precise than the explanation of Senator McAdoo.

*Mr. Lanham.* Mr. Speaker, this is a bill which should have been passed long ago. It provides for the proper protection of inventors in the matter of the application and the prosecution of their claims before the Patent Office. The bill has passed the Senate—I understand unanimously. *It simply prevents those who are not authorized to practice before the Patent Office from holding themselves out as being entitled so to practice*, and I am advised that some persons who are not so qualified are advertising in foreign newspapers, in languages of those respective countries, which we cannot understand, and thereby preying upon the gullible people in other lands. This prevents those who have been disbarred from practicing before the Patent Office and is designed to penalize fraud. I think no further explanation is necessary. (Emphasis added) 83 Congressional Record 5866 (1938)

Mr. Lanham's explanation is of great importance here. The forbidden holding out is the holding out as *entitled* to practice. The word used in the Act is "authorized". The Act is not aimed at a representation so much as it is aimed at a *misrepresentation*. In Mr. Lanham's words, the Act "is designed to prevent *fraud*." For a person to hold himself out as having the "know-how" or "ability" to handle patent business would not be fraud if indeed the person, through education and training, had that know-how—but for that same person, if not recognized by the Patent Office, to hold himself out as *entitled* to handle patent business would be a fraudulent misrepresentation.

Beyond the immediate history of the adoption of the punitive statute with which we here are precisely concerned, is the overall scheme of Congressional grant of supervisory power to the Commissioner of Patents. The Congress perhaps could have given the Patent Office super-

vision of all patent business, but *the Congress has not given the Patent Office supervision of all patent business.* When the punitive act was being considered, the Commissioner had relevant power only to "prescribe rules and regulations governing the *recognition* of agents, attorneys, or other persons *representing* applicants or other parties *before his office. . . .*" (Act of February 18, 1922, c. 58 § 3, 42 Stat. 390) (Emphasis added). This limited power has remained limited. The current 35 U.S.C. 31 (Act of July 19, 1952, Ch. 950 § 1, 66 Stat. 795) provides:

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys or other persons *representing* applicants or other parties before the Patent Office . . . .

Congress *might* have regulated all those giving advice or assistance to a patent applicant. Congress *might* have required all those giving advice or assistance to an applicant to register with the Patent Office. Congress *might* have provided sanctions for those who offered to advise and assist when they were not authorized by or qualified with the Patent Office to do so, but Congress *did not do this*. Congress required those who wished to *represent* others to register. And Congress provided *only* that those who were not authorized by or qualified with the Patent Office may not hold themselves out as so authorized or qualified.

**C. The letters and correspondence of Ann Hastings admittedly tell of the ability of Ann Hastings but do not indicate any official approval or qualification.**

The key letter sent by Ann Hastings is the letter in response to an inventor's first inquiry. Therein the offer is made to prepare the application, (See Appendix pp. 1-2, 8-9, 11-12, 34-35) and therein is said "To supervise this work, I employ only graduate engineers who have had at least 15 years of experience as Patent Examiners in the

United States Patent Office". (A true statement incidently) But also therein is the distinction made between Ann Hastings and a registered patent attorney, clearly indicating that Ann Hastings is not such a registered attorney. Nowhere do the letters say that Ann Hastings is authorized, approved, or in any other way sanctioned by the Patent Office.

Nor does the fact that the letters offer to prepare patent applications and hold out the ability to do so permit the implication that the Patent Office has authorized or qualified Ann Hastings in any manner. The word "qualified" as used in 35 U.S.C. 33 does not mean ability in the sense of know-how (See III (B) supra). If the holding out of ability were to imply the stamp of approval as necessary to violate the Statute, then the limited meaning of "qualified" would cease to be limited—contrary to the intent of Congress. Something more is needed, and that something more does not appear in the letters of Ann Hastings submitted into evidence below.

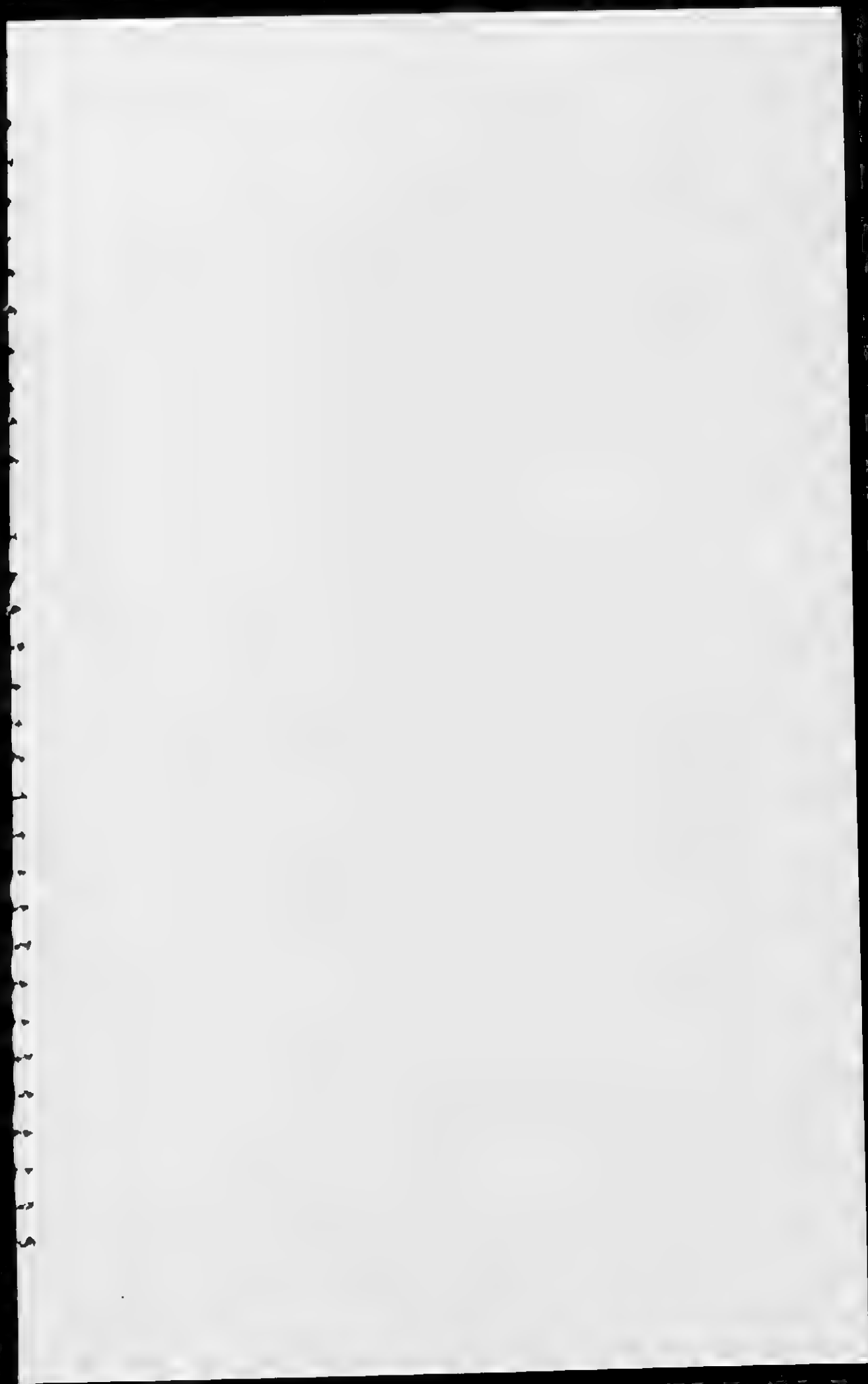
### CONCLUSION

It is, therefore, respectfully submitted that this Court reverse the judgment of conviction entered below, and direct the entry of a judgment of acquittal, or, in the alternative that the case be remanded for a new trial, or for entry of findings of fact specially.

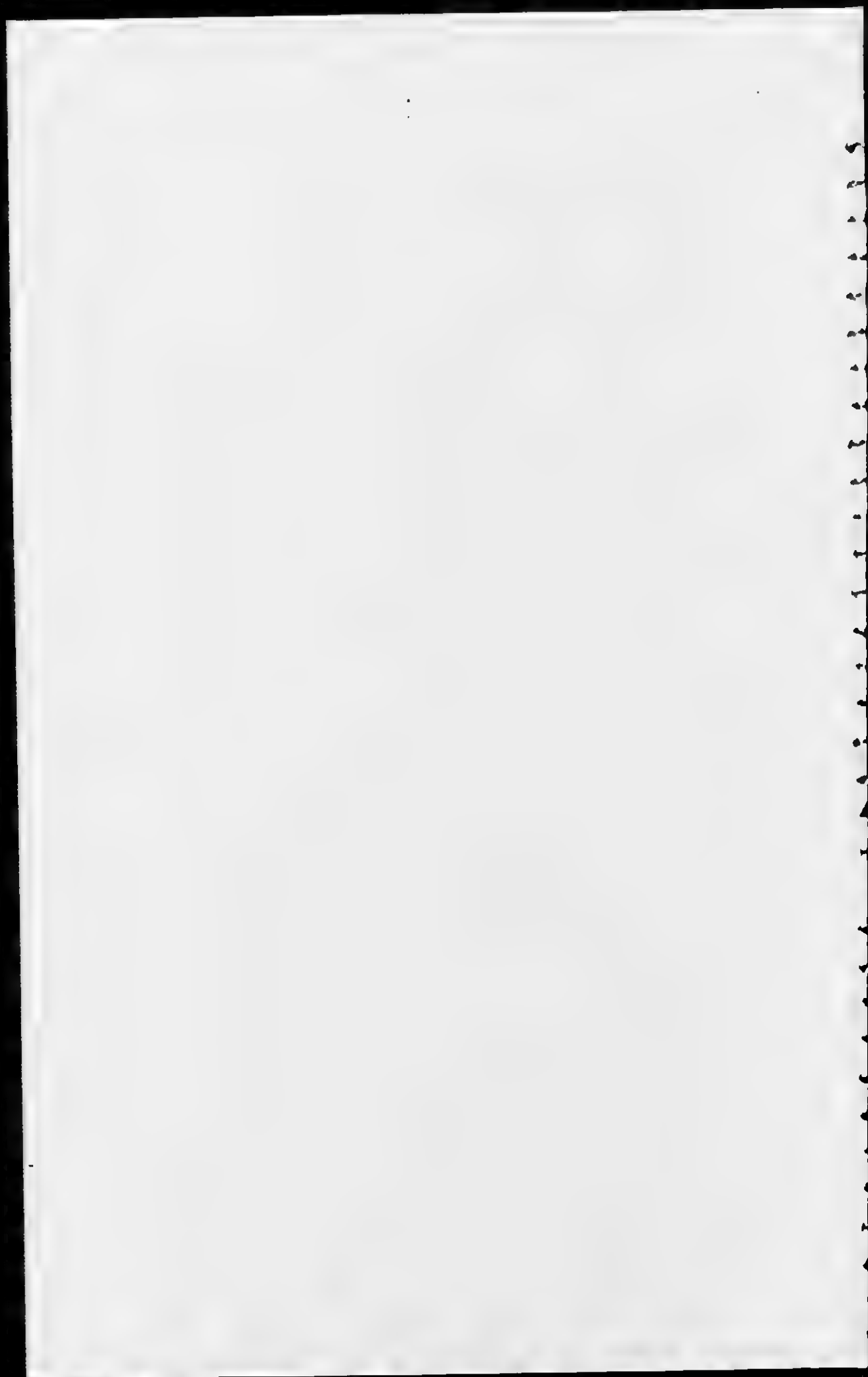
Respectfully submitted,

DONALD CEFARATTI, JR.  
WILLIAM E. CUMBERLAND  
1825 K Street, N. W. #707  
Washington, D. C. 20006  
*Attorneys for Appellant*

November 11, 1966



## **APPENDIX**



## APPENDIX

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### Exhibit 4(a)

MISS ANN HASTINGS  
PATENT SEARCHER  
POST OFFICE BOX 176  
BENJAMIN FRANKLIN STATION  
WASHINGTON 4, D. C.  
Sterling 3-7090

October 2, 1964

Mr. Lawrence N. Belaj  
1112 E. 148th Street  
Cleveland 10, Ohio

Dear Mr. Belaj:

Thank you for your inquiry requesting information concerning my service.

Patent searches are conducted in the United States Patent Office to determine whether or not inventions submitted are new. Preliminary reports are airmailed within 48 hours from date of receipt of your search request. Copies of the nearest patents located as a result of the search are forwarded within the next few days, and are furnished without charge. To facilitate the handling of your case, the enclosed Record of Invention form should be executed as shown and returned to me as promptly as possible, together with your remittance in the amount of \$6.00 to cover the search fee.

If the results of the search disclose your invention to be new, you will receive a supplementary report, and your next step will be to file your application for patent. Patent applications may be filed through a registered patent attorney, or if the inventor prefers, he may file his own ap-

plication, showing no attorney of record. When applications are filed by an attorney, the Patent Office directs all communications regarding the application to the attorney—not to the inventor. If the inventor files his own case direct, the Patent Office will deal directly with him, and he will know at all times the exact status of his application.

Should you decide on the latter procedure, I would be glad to handle the preparation of your official papers. To supervise this work, I employ only graduate engineers who have had at least 15 years experience as Patent Examiners in the United States Patent Office. Your application would be prepared complete, ready for your signature and filing. My fees are very reasonable, and an estimate will be included in my final search report.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office.

Again thanking you for your inquiry, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:ek  
Enc.

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**Exhibit 4(b)**

[Face Side]

**CERTIFICATE OF SEARCH**

**No. 9340**

I hereby certify that I have made a careful search in the United States Patent Office to determine whether or not your invention (identified on the reverse side of this certificate) is new and patentable, and the results of my search are here reported as follows: Your invention appears to

be new and patentable, and it is recommended that an application for patent be filed. Supplementary report with patent copies will follow.

Copies of the patents which were located during my search will be forwarded to you within the next few days, together with a supplemental report if your invention is shown here to be patentable.

/s/ ANN HASTINGS  
Patent Searcher

October 14, 1964

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[Reverse Side]

SEARCH No. 9340

IMPORTANT!

Your search material has been filed by NUMBER—not by name. Therefore, please refer to your SEARCH NUMBER in all correspondence pertaining to this invention; otherwise, it will be impossible to locate your file. Also, before it will be possible to answer any question that may arise in regard to this search, it will be necessary that you return the patent copies which you will receive within the next few days.

Re: Patent Search on STATOR LAMINATION DESIGN FOR ELECTRIC MOTORS

Mr. Lawrence N. Belaj  
1112 East 148th Street  
Cleveland 10, Ohio

MISS ANN HASTINGS  
P. O. Box 176  
Washington 4, D. C.

AH

**Exhibit 4(c)**

[Letterhead omitted]

October 15, 1964

S-9340

Mr. Lawrence N. Belaj  
1112 East 148th Street  
Cleveland 10, Ohio

Re: Patent Search on Stator Lamination Design for  
Electric Motors

Dear Mr. Belaj:

I have completed a thorough preliminary search of the art pertaining to your invention, and cited below are the most pertinent prior patents located in the records of the Patent Office. After carefully considering your invention in the light of these patents, I am pleased to report that your invention appears to be patentable, and it is recommended that an application for patent be filed as promptly as possible.

Your next step is an important one. If you decide to file through a registered patent attorney, it is strongly recommended that you specifically and firmly instruct him to furnish you promptly the **INVENTOR'S COPY** of all letters and other communications he may receive from the Patent Office, as this practice is seldom followed by most attorneys. Or, if you decide on the direct procedure, as explained in my form letter attached, I will be very glad to handle the preparation of the official papers for you. My fee for preparing the Specification and Claims, and the official Patent Office drawing, will be \$360.00, plus the \$30.00 government filing fee. The papers will be prepared complete, ready for your signature and filing.

To proceed with your application, please return the enclosed patent copies, together with your initial remittance in the sum of \$120.00. On receipt, my draftsman will pre-

pare the official Patent Office drawing, and you will receive a photoprint copy thereof for your inspection and approval or correction before the Specification and Claims are prepared. From 4 to 6 weeks should be allowed for the preparation of your patent application.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office and you have patent pending.

Trusting that I may have the pleasure of preparing your patent application in the very near future, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

References Cited:

1,582,427

2,099,575

1,517,306

AH/mw

Enc.

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Exhibit 4(d)

[Letterhead omitted]

December 14, 1964

C-2572

Mr. Lawrence N. Belaj  
1112 East 148th Street  
Cleveland 10, Ohio

Re: Application for Patent on Stator Lamination for  
Electric Motors

Dear Mr. Belaj:

You will find enclosed herewith a photoprint copy of the official drawings for your application, which is submitted for your inspection and approval or correction.

Please examine this print carefully, in order to make certain that all of the features of your invention have been adequately illustrated as originally presented.

Please indicate any changes or corrections which may be required on the face of the print, and return it to me.

If the drawing is correct as shown, please return the approved print to me as promptly as possible, together with your remittance in the sum of \$240.00, for completion of the application papers.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

Enc.  
AH/mw

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**Exhibit 4(e)**

[Letterhead omitted]

December 29, 1964  
C-2572

Mr. Lawrence N. Belaj  
1112 East 148th Street  
Cleveland 10, Ohio

Re: Application for Patent on Stator Lamination for  
Electric Motors

Dear Mr. Belaj:

Thank you for returning the approved photoprint copy of the official drawing in your application, which was submitted to you for your inspection.

Your case is now in the hands of my specification writer for preparation of the Specification and Claims. Just as soon as he has completed his work in the case, the draftsman will ink in the drawing and enter the reference nu-

merals referred to in the Specification. The complete application will then be sent to you for signature.

Receipt of your remittance in the sum of \$240.00, for completion of the case, is acknowledged with thanks.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH. w

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**Exhibit 4(f)**

[Letterhead omitted]

February 12, 1965  
C-2572

Mr. Lawrence N. Belaj  
1112 East 148th Street  
Cleveland 10, Ohio

Re: Application for Patent on Stator Lamination for  
Electric Motors

Dear Mr. Belaj:

We have completed the preparation of your application, and the papers are enclosed herein for your signature. Your instructions are as follows:

Please sign the last sheet of the application before a Notary Public in the space provided. Erase the pencilled signature which I have entered. The form must be dated in the space provided. Please make certain that the Notary affixes his seal as well as his signature to the document, and also the date on which his commission expires, as this is a strict requirement of the Patent Office.

The signed application should be returned to me in the enclosed envelope, together with a postal money order or a certified check in the sum of \$30.00, made payable to

THE COMMISSIONER OF PATENTS, which will constitute the government filing fee. Upon receipt of the papers, properly executed, I will deliver your application to the Patent Office for filing.

Please make certain your remittance of \$30.00 is in the form of a certified check or a postal money order. Do not send a personal check unless it has been certified.

A copy of the complete application is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

Enc.

AH/mw

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**Exhibit 5(d)**

[Letterhead omitted]

Thank you for your inquiry requesting information concerning my service.

Patent searches are conducted in the United States Patent Office to determine whether or not inventions submitted are new. Preliminary reports are airmailed within 48 hours from date of receipt of your search request. Copies of the nearest patents located as a result of the search are forwarded within the next few days, and are furnished without charge. To facilitate the handling of your case, the enclosed Record of Invention form should be executed as shown and returned to me as promptly as possible, together with your remittance in the amount of \$6.00 to cover the search fee.

If the results of the search disclose your invention to be new, you will receive a supplementary report, and your next step will be to file your application for patent. Patent applications may be filed through a registered patent at-

torney, or if the inventor prefers, he may file his own application, showing no attorney of record. When applications are filed by an attorney, the Patent Office directs all communications regarding the application to the attorney—not to the inventor. If the inventor files his own case direct, the Patent Office will deal directly with him, and he will know at all times the exact status of his application.

Should you decide on the latter procedure, I would be glad to handle the preparation of your application for patent. I employ only graduate engineers for this work who have had at least 15 years' experience at Patent Examiners in the United States Patent Office. Your application would be prepared complete, ready for your signature and filing. My fees are very reasonable, and an estimate will be included in my final search report.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office.

Again thanking you for your inquiry, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:ek  
Enc.

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**Exhibit 5(e)**

[Face Side]

**CERTIFICATE OF SEARCH**

**No. 4595**

I hereby certify that I have made a careful search in the United States Patent Office to determine whether or not your invention (identified on the reverse side of this certificate) is new and patentable, and the results of my search are here reported as follows: Your invention appears to

be new and patentable, and it is recommended that an application for patent be filed. Supplementary report with patent copy will follow.

Copies of the patents which were located during my search will be forwarded to you within the next few days, together with a supplemental report if your invention is shown here to be patentable.

/s/ ANN HASTINGS  
Patent Searcher

March 22, 1962

[Reverse Side]

SEARCH No. 4595

**IMPORTANT!**

Your search material has been filed by NUMBER—not by name. Therefore, please refer to your SEARCH NUMBER in all correspondence pertaining to this invention; otherwise, it will be impossible to locate your file. Also, before it will be possible to answer any question that may arise in regard to this search, it will be necessary that you return the patent copies which you will receive within the next few days.

Re: Patent Search on CAR PAN.

Mr. Rudy D. Gamblin  
2100 Travis Street  
Amarillo, Texas

MISS ANN HASTINGS  
P. O. Box 176  
Washington 4, D. C.

AH

**Exhibit 5(e)**

[Letterhead omitted]

March 22, 1962

S-4595

Mr. Rudy D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Car Pan

Dear Mr. Gamblin:

I have completed a thorough preliminary search of the art pertaining to your invention, and cited below are the most pertinent prior patents located in the records of the Patent Office. After carefully considering your invention in the light of these patents, I am pleased to report that your invention appears to be patentable, and it is recommended that an application for patent be filed as promptly as possible.

I will be very glad to handle the preparation of your patent application. My fee for preparing the Specification and Claims, and the official Patent Office drawings, will be \$380.00, plus the \$30.00 government filing fee. Your application will be prepared by a thoroughly qualified graduate engineer, who was formerly an Examiner in the United States Patent Office for more than 15 years. The papers will be prepared complete, ready for your signature and filing.

To proceed with your application, please return the enclosed patent copies, together with your initial remittance in the sum of \$200.00. On receipt my draftsman will prepare the official Patent Office drawing, and you will receive a photoprint copy thereof for your inspection and approval or correction before the Specification and Claims are prepared. From 3 to 4 weeks should be allowed for the preparation of your patent application.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office and you have patent pending. At that time, your application will be printed as per the sample enclosed, and 25 copies will be forwarded to you for distribution to prospective manufacturers.

Trusting that I may have the pleasure of preparing your patent application in the very near future, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

References Cited:

2,886,828

AH:dd

Plastic Sand Pan  
for Children

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Exhibit 5(f)

[Letterhead omitted]

April 13, 1962  
C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

You will find enclosed herewith a photoprint copy of the official drawing for your application, which is submitted for your inspection and approval or correction. Please examine this print carefully, in order to make certain that all of the features of your invention have been adequately illustrated as originally presented.

If any changes or corrections are required, please indicate them on the face of the print and return it to me.

If the drawing is correct as shown, please return the approved print to me as promptly as possible, together with your remittance in the sum of \$180.00, for completion of the application papers.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Enc.

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**Exhibit 5(g)**

[Letterhead omitted]

April 23, 1962  
C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

My draftsman has made the corrections in the official drawing for your application which you requested, and I am submitting herewith a photoprint copy of the corrected drawing for your inspection and approval.

If the drawing is now correct, please return the approved print to me as promptly as possible, together with your remittance in the sum of \$180.00, in order that we may proceed with the preparation of the Specification and Claims.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Enc.

14

**Exhibit 5(h)**

[Letterhead omitted]

May 11, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

My draftsman has made the corrections in the official drawing for your application which you requested, and I am submitting herewith a photoprint copy of the corrected drawing for your inspection and approval. The figures 4—4 indicate the section source for figure 4. It does not indicate the thickness.

If the drawing is now correct, please return the approved print to me as promptly as possible, together with your remittance in the amount of \$180.00, for completion of the application papers.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Enc.

15

**Exhibit 5(1)**

[Letterhead omitted]

May 23, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

Thank you for returning the approved photoprint copy of the official drawing in your application, which was submitted to you for your inspection.

Your case is now in the hands of the specification writer for preparation of the specification and claims. Just as soon as he has completed his work on the case, the drawing will be inked in, and the complete application will be sent to you for signature.

Receipt of remittance in the amount of \$180.00 for completion of the case, is acknowledged with thanks.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

**Exhibit 5(j)**

[Letterhead omitted]

June 7, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

I have just received notice from my bank that the Amarillo Bank of Texas has refused to honor your check dated May 22, 1962 in the amount of \$180.00, due to insufficient funds in your account. You rendered this check in payment of my fee for the preparation of the above identified application for patent. Obviously, we cannot continue with the preparation of your application until I receive your proper remittance in the amount of \$180.00.

Please send me either a postal money order, a bank money order or a certified check in the amount of \$180.00 to cover the balance due. We are holding your case in abeyance pending receipt of this remittance. Upon receipt of your proper remittance, I will return the check which bounced.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

**Exhibit 5(k)**

[Letterhead omitted]

June 14, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

This will acknowledge receipt of your remittance in the amount of \$180.00. I am returning herewith your check dated May 22, 1962, also in the amount of \$180.00. This was the check which was returned by your bank.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Enc.

---

**Exhibit 5(l)**

[Letterhead omitted]

June 21, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on DRIP PAN

Dear Mr. Gamblin:

We have completed the preparation of your application, and the papers are enclosed herein for your signature. Your instructions are as follows:

Please sign the last sheet of the application before a Notary Public in the space provided. Erase the pencilled signature which I have entered. The form must be dated in the space provided. Please make certain that the Notary affixes his seal as well as his signature to the document, and also the date on which his commission expires, as this is a strict requirement of the Patent Office.

The signed application should be returned to me in the enclosed envelope, together with a postal money order or a certified check in the sum of \$30.00, made payable to THE COMMISSIONER OF PATENTS, which will constitute the government filing fee.

Upon receipt of the papers, properly executed, I will deliver your application to the Patent Office for filing.

A copy of the complete application is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Encs.

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Exhibit 5(m)

[Letterhead omitted]

July 5, 1962  
C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Drip Pan

Dear Mr. Gamblin:

This is to advise that your application has been delivered to the Patent Office, and that your filing date will appear as July 5, 1962.

In approximately three weeks, you will receive a small blue slip from the Patent Office, acknowledging receipt of your application and the government filing fee. Please let me know the serial number which will appear on that slip, and the number of the division to which your application has been assigned, in order that I may complete my records in the case.

It will be at least several months before you may expect to receive any action from the Patent Office examiner in connection with your application. Please, do not attempt to reply to Patent Office communications yourself. You should contact me immediately when you receive an action from the examiner, and send me a copy of the action for further instructions.

Now that your application has been filed in the Patent Office, you may proceed with the manufacture, sale, or promotion of your invention, marking it "Patent Pending" or "Patent Applied For."

Thanking you again for this opportunity to be of service,  
I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH/cd  
Enc.

**Exhibit 5(p)**

[Letterhead omitted]

October 10, 1962

C-2100

Mr. Rudolph D. Gamblin  
2100 Travis Street  
Amarillo, Texas

Re: Application for Patent on Car Pan

Dear Mr. Gamblin:

Thank you for sending me a copy of the Examiner's action dated September 26, 1962, in connection with your pending application for patent.

Very often the examiner will reject all of the claims in his first action. He does so in order to draw argument from the inventor. It is then up to the inventor to have an amendment prepared and filed in the Patent Office, which will overcome the objections of the Examiner to the application as filed, avoid the references cited by the Examiner, add or delete claims if necessary, and attempt to bring the case into condition for allowance. This is normal patent procedure, and you should not be discouraged by the Examiner's comments, as every application must be fully prosecuted.

My fee for preparing the required amendment responsive to the Examiner's action will be \$35.00. Promptly on receipt of your remittance in this amount, copies of the references which have been cited by the Examiner will be ordered, and the case will be turned over to my specification writer for preparation of the amendment.

The Patent Office allows the inventor six months' time from the date of the Examiner's action in which to file his amendment. Your amendment must therefore be filed in the Patent Office no later than March 26, 1963, or your application will go abandoned.

Please allow at least 60 days for completion of the amendment. It may take some time to obtain copies of the references which have been cited and to review the entire application before amending the case.

The amendment will be sent to you for signature before the due date.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(a)**

[Letterhead omitted]

September 27, 1960

S-1660

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: E-Z Drapery Hook Measure

Dear Mr. Kaufman:

I have completed a thorough preliminary search of the art pertaining to your invention, and cited below are the most pertinent prior patents located in the records of the Patent Office. After carefully considering your invention in the light of these patents, I am pleased to report that your invention appears to be patentable, and it is recommended that an application for patent be filed as promptly as possible.

I will be very glad to handle the preparation of your patent application. My fee for preparing the Specification and Claims, and the official Patent Office drawing, will be \$280.00, plus the \$30.00 government filing fee. Your application will be prepared by a thoroughly qualified graduate

engineer, who was formerly an Examiner in the United States Patent Office for more than 15 years. The papers will be prepared complete, ready for your signature and filing.

To proceed with your application, please return the enclosed patent copies, together with your initial remittance in the sum of \$140.00. On receipt my draftsman will prepare the official Patent Office drawing, and you will receive a photoprint copy thereof for your inspection and approval or correction before the Specification and Claims are prepared. From 3 to 4 weeks should be allowed for the preparation of your patent application.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office and you have patent pending.

Trusting that I may have the pleasure of preparing your patent application in the very near future, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

References Cited:

1,732,906

2,666,991

2,387,986

AH:ead

Enc.

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[Face Side]

CASE No. 1764

**IMPORTANT!**

Your case has been filed by NUMBER—not by name. Therefore, please refer to your CASE NUMBER in all

correspondence pertaining to this application; otherwise, it will be impossible to locate your file.

MISS ANN HASTINGS  
P. O. Box 176  
Washington 4, D. C.

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

AH

[Reverse Side]

No. 1764

THIS IS YOUR RECEIPT—RETAIN IT IN YOUR FILES

Re: Application for Patent on EASY DRAPERY HOOK  
MEASURE

Dear Inventor:

This will acknowledge receipt of your letter authorizing the preparation of your application for patent, and enclosing your initial remittance in the sum of \$140.00.

Your material has been turned over to an expert Patent Draftsman for the preparation of your Official Patent Office Drawings, and you may expect to receive a photoprint copy thereof for your inspection and approval or correction within the next ten days. In the meantime, please return the patent copies which were included with our supplemental search report (if you have not already done so), as they will be required by our Specification Writer when he draws the claims for your application. At the same time, please provide the information requested on the attached card and return it at once.

/s/ ANN HASTINGS

November 10, 1960

KEEP THIS CARD IN YOUR FILES.

[Face Side]

No. 1660

## CERTIFICATE OF SEARCH

I hereby certify that I have made a careful search in the United States Patent Office to determine whether or not your invention (identified on the reverse side of this certificate) is new and patentable, and the results of my search are here reported as follows: Your invention appears to be new and patentable, and it is recommended that an application for patent be filed. A supplementary report with patent copies will follow.

Copies of the patents which were located during my search will be forwarded to you within the next few days, together with a supplemental report if your invention is shown here to be patentable.

/s/ ANN HASTINGS  
Patent Searcher

September 27, 1960

[Reverse Side]

SEARCH No. 1660

## IMPORTANT!

Your search material has been filed by NUMBER—not by name. Therefore, please refer to your SEARCH NUMBER in all correspondence pertaining to this invention; otherwise, it will be impossible to locate your file. Also, before it will be possible to answer any question that may arise in regard to this search, it will be necessary that you

return the patent copies which you will receive within the next few days.

Re: Patent Search on E-Z DRAPERY HOOK MEASURE

MISS ANN HASTINGS  
P. O. Box 176  
Washington 4, D. C.

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

AH

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Exhibit 6(b)

[Letterhead omitted]

November 14, 1960  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Easy Drapery Hook  
Measure

Dear Mr. Kaufman:

This is a belated acknowledgment of your letter dated October 31, 1960, authorizing me to proceed with the preparation of your patent application, and enclosing your initial remittance in the amount of \$140.00.

First, the Patent Office will not permit us to use the title which you requested for your invention. It will be necessary that the title appear as shown above.

In preparing your application, the claims will be drawn so as to give you the broadest possible protection. Minor changes could be made in your invention without departing from the scope of the protection afforded by your patent,

but of course, if any major changes are made, it will be necessary that a separate application be filed.

It is difficult for me to answer questions as to the possibility of success or failure in the sale of your invention, as I do not undertake the sale or promotion of patents or inventions. My work is devoted only to patent searching and to the preparation and prosecution of patent and trademark applications.

A written receipt has been mailed to you under separate cover which should be retained in your files.

Thanking you for this opportunity to be of service, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:ead

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Exhibit 6(c)

[Letterhead omitted]

May 24, 1961  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Easy Drapery Pleat and  
Hook Measure

Dear Mr. Kaufman:

Thank you for returning the approved photoprint copy of the official drawing in your application, which was submitted to you for your inspection.

Your case is now in the hands of the specification writer for preparation of the specification and claims. Just as soon as he has completed his work on the case, the drawing

will be inked in, and the complete application will be sent to you for signature.

Receipt of remittance in the amount of \$140.00 for completion of the case is acknowledged with thanks.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(d)**

[Letterhead omitted]

June 6, 1961

C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Easy Drapery Pleat and  
Hook Measure

Dear Mr. Kaufman:

We have completed the preparation of your application, and the papers are enclosed herein for your signature. Your instructions are as follows:

Please sign the last sheet of the application before a Notary Public in the space provided. Erase the pencilled signature which I have entered. The form must be dated in the space provided. Please make certain that the Notary affixes his seal as well as his signature to the document, and also the date on which his commission expires, as this is a strict requirement of the Patent Office.

The signed application should be returned to me in the enclosed envelope, together with a postal money order or a certified check in the sum of \$30.00, made payable to THE

COMMISSIONER OF PATENTS, which will constitute the government filing fee.

Upon receipt of the papers, properly executed, I will deliver your application to the Patent Office for filing.

A copy of the complete application is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(e)**

[Letterhead omitted]

June 14, 1961

C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Drapery Hook and Pleat  
Ruler

Dear Mr. Kaufman:

This is to advise that your application has been delivered to the Patent Office, and that your filing date will appear as June 14, 1961.

In approximately three weeks, you will receive a small blue slip from the Patent Office, acknowledging receipt of your application and the government filing fee. Please let me know the serial number which will appear on that slip, and the number of the division to which your application has been assigned, in order that I may complete my records in the case.

It will be at least several months before you may expect to receive any action from the Patent Office examiner in connection with your application. Please, do not attempt

to reply to Patent Office communications yourself. You should contact me immediately when you receive an action from the examiner, and send me a copy of the action for further instructions.

Now that your application has been filed in the Patent Office, you may proceed with the manufacture, sale, or promotion of your invention, marking it "Patent Pending" or "Patent Applied For."

Thanking you again for this opportunity to be of service, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(f)**

[Letterhead omitted]

August 21, 1961  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Pending Application for Patent on Drapery Hook  
and Pleat Ruler

Dear Mr. Kaufman:

This is in reply to your letter of August 17, 1961, enclosing a copy of the examiner's action dated August 15, 1961, in connection with your pending application for patent.

Very often the examiner will reject all of the claims in his first action. He does so in order to draw argument from the inventor. It is then up to the inventor to have an amendment prepared and filed in the Patent Office, which will overcome the objections of the examiner, avoid the references cited, add or delete claims if necessary, and

attempt to bring the case into condition for allowance. This is normal patent procedure, and you should not be discouraged by the examiner's comments, as every application must be fully prosecuted.

My fee for preparing the required amendment responsive to the examiner's action will be \$45.00. Promptly on receipt of your remittance in this amount, the amendment will be prepared and sent to you for signature.

The Patent Office allows the inventor six months' time from the date of the examiner's action in which to file his amendment. Your amendment must therefore be filed in the Patent Office no later than February 15, 1962, or your application will go abandoned.

Please allow at least 90 days for preparation of this amendment.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(g)**

[Letterhead omitted]

September 8, 1961  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Drapery Hook and Pleat Ruler

Dear Mr. Kaufman:

This is in reply to your letter of September 5, 1961, referring to your above identified invention.

Trade-mark or copyright registration would do nothing towards the protection of your invention. There would be

nothing to prevent others from making and selling the device and you would have no comeback against them. Trade-marks refer only to the particular trade name under which the product is sold. However, someone else could select a different name and sell the same item. Copyrights pertain to printed matter such as magazines, catalogs, and other publications.

I would certainly recommend that you continue with the prosecution of your application for patent. It would be utterly ridiculous to throw in the towel at this point. As I explained in my letter of August 21, every application for patent must be fully prosecuted and it is not at all unusual for the examiner to reject all of the claims in his first action.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(h)**

[Letterhead omitted]

February 6, 1962  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Drapery Hook and Pleat  
Ruler

Dear Mr. Kaufman:

We have prepared an amendment in response to the examiner's action dated August 15, 1961, and the amendment is enclosed herein for your signature.

Please sign the enclosed amendment in the space provided, and return it to me as promptly as possible, in order

that I may deliver it to the Patent Office for filing. This amendment must be filed in the Patent Office no later than February 15, 1962, or the application will go abandoned.

A copy of the amendment is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 6(1)**

[Letterhead omitted]

February 27, 1962  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Drapery Hook and Pleat  
Ruler

Dear Mr. Kaufman:

Enclosed herewith is the envelope which contained the amendment which you signed and which should have been filed in the Patent Office on or before February 15, 1962. As you will note on the back of the envelope, the letter was received today. It took eighteen days in transit. The delay was partly your fault, and partly the fault of the Post Office Department. You sent it AIR MAIL, but you placed only 8¢ in stamps on the envelope, instead of 14¢ as required.

The Post Office should have delivered it to me promptly, or returned it to you, but instead of doing either, the letter got stuck some place. Since the letter was not registered, there is no way of placing the responsibility.

Your application has gone abandoned, inasmuch as no amendment was filed in the Patent Office by February 15th, and the only thing for you to do under the circumstances is to refile the application, if you still desire to pursue your patent.

The circumstances are indeed regrettable, but they cannot be accredited to me as the situation was outside my control.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:bk  
enc.

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**Exhibit 6(k)**

[Letterhead omitted]

May 8, 1962  
C-1764

Mr. Irving Kaufman  
475 N.W. 30th Terrace  
Ft. Lauderdale, Florida

Re: Application for Patent on Drapery Hook and Pleat  
Ruler

Dear Mr. Kaufman:

This is in reply to your letter of May 3, 1962.

In preparing a new application on your invention, the Specification and Claims certainly will have to be revised in the light of the examiner's action of August 15, 1961, on your abandoned application, and the references which he cited.

The cost of preparing the new case would be \$250.00, plus the \$30.00 government filing fee. I would require an

initial remittance of \$125.00 with your authorization to go ahead with the case.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 7(a)**

[Letterhead omitted]

November 15, 1961

Dear Mr. Edgar:

Thank you for your inquiry requesting information concerning my service.

Patent searches are conducted in the United States Patent Office to determine whether or not inventions submitted are new. Preliminary reports are airmailed within 48 hours from date of receipt of your search request. Copies of the nearest patents located as a result of the search are forwarded within the next few days, and are furnished without charge. To facilitate the handling of your case, the enclosed Record of Invention form should be executed as shown and returned to me as promptly as possible, together with your remittance in the amount of \$6.00 to cover the search fee.

If the results of the search disclose your invention to be new, you will receive a supplementary report, and your next step will be to file your application for patent. Patent applications may be filed through a registered patent attorney, or if the inventor prefers, he may file his own application, showing no attorney of record. When applications are filed by an attorney, the Patent Office directs all communications regarding the application to the attorney—not to the inventor. If the inventor files his own case direct, the Patent Office will deal directly with him,

and he will know at all times the exact status of his application.

Should you decide on the latter procedure, I would be glad to handle the preparation of your application for patent. I employ only graduate engineers for this work who have had at least 15 years' experience as Patent Examiners in the United States Patent Office. Your application would be prepared complete, ready for your signature and filing. My fees are very reasonable, and an estimate will be included in my final search report.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office.

Again thanking you for your inquiry, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:ek  
Enc.

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**Exhibit 7(b)**

[Face Side]

**CERTIFICATE OF SEARCH**

**No. 3900**

I hereby certify that I have made a careful search in the United States Patent Office to determine whether or not your invention (identified on the reverse side of this certificate) is new and patentable, and the results of my search are here reported as follows: Your invention appears to be new and patentable, and it is recommended that an application for patent be filed. Supplementary report with patent copies will follow.

Copies of the patents which were located during my search will be forwarded to you within the next few days, together with a supplemental report if your invention is shown here to be patentable.

/s/ ANN HASTINGS  
Patent Searcher

November 15, 1961

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[Reverse Side]

SEARCH No. 3900

**IMPORTANT!**

Your search material has been filed by NUMBER—not by name. Therefore, please refer to your SEARCH NUMBER in all correspondence pertaining to this invention; otherwise, it will be impossible to locate your file. Also, before it will be possible to answer any question that may arise in regard to this search, it will be necessary that you return the patent copies which you will receive within the next few days.

Re: Patent Search on "FERROMETER" METAL DETECTOR

Mr. Irvin T. Edgar  
516 So. Huntington Avenue  
Monterey Park, California

MISS ANN HASTINGS  
P. O. Box 176  
Washington 4, D. C.

AH

Exhibit 7(c)

[Letterhead omitted]

November 15, 1961

S-3900

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: "Ferrometer" Metal Detector

Dear Mr. Edgar:

I have completed a thorough preliminary search of the art pertaining to your invention, and cited below are the most pertinent prior patents located in the records of the Patent Office. After carefully considering your invention in the light of these patents, I am pleased to report that your invention appears to be patentable, and it is recommended that an application for patent be filed as promptly as possible.

I will be very glad to handle the preparation of your patent application. My fee for preparing the Specification and Claims, and the official Patent Office drawing, will be \$480.00, plus the \$30.00 government filing fee. Your application will be prepared by a thoroughly qualified graduate engineer, who was formerly an Examiner in the United States Patent Office for more than 15 years. The papers will be prepared complete, ready for your signature and filing.

To proceed with your application, please return the enclosed patent copies, together with your initial remittance in the sum of \$240.00. On receipt my draftsman will prepare the official Patent Office drawing, and you will receive a photoprint copy thereof for your inspection and approval or correction before the Specification and Claims are prepared. From 3 to 4 weeks should be allowed for the preparation of your patent application.

No attempt should be made to sell your invention until your application for patent has been filed in the Patent Office and you have patent pending.

Trusting that I may have the pleasure of preparing your patent application in the very near future, I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

References Cited:

2,990,513

2,744,232

2,999,979

AH:dd

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Exhibit 7(d)

[Letterhead omitted]

January 5, 1962

C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Dear Mr. Edgar:

Thank you for your inquiry requesting additional information on my publication service.

The cost of publishing an application for patent is based entirely upon the size of the particular case involved, and the amount of printing to be done. Just as soon as your application on the Ferrometer is filed in the Patent Office, and when you receive the official filing receipt from the Patent Office, your case will be ready for publication. I will be in a position to quote a fee for this service when your application papers are sent to you for signature. Full instructions of the procedure to follow will be in-

cluded with your estimate. The time usually required for publication of an application is 20 days.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 7(e)**

[Letterhead omitted]

February 8, 1962  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Application for Patent on "Ferrometer" Metal Detector

Dear Mr. Edgar:

You will find enclosed herewith a photoprint copy of the official drawing for your application, which is submitted for your inspection and approval or correction. Please examine this print carefully, in order to make certain that all of the features of your invention have been adequately illustrated as originally presented.

If any changes or corrections are required, please indicate them on the face of the print and return it to me.

If the drawing is correct as shown, please return the approved print to me as promptly as possible, together with your remittance in the sum of \$240.00, for completion of the application papers.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd  
Enc.

**Exhibit 7(f)**

[Letterhead omitted]

February 13, 1962  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Application for Patent on "Ferrometer" Metal Detector

Dear Mr. Edgar:

Thank you for returning the approved photoprint copy of the official drawing in your application, which was submitted to you for your inspection.

Your case is now in the hands of the specification writer for preparation of the specification and claims. Just as soon as he has completed his work on the case, the drawing will be inked in, and the complete application will be sent to you for signature.

Receipt of remittance in the amount of \$240.00 for completion of the case is acknowledged with thanks.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

**Exhibit 7(g)**

[Letterhead omitted]

March 20, 1962

C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Application for Patent on MAGNETOMETER

Dear Mr. Edgar:

We have completed the preparation of your application, and the papers are enclosed herein for your signature. Your instructions are as follows:

Please sign the last sheet of the application before a Notary Public in the space provided. Erase the pencilled signature which I have entered. The form must be dated in the space provided. Please make certain that the Notary affixes his seal as well as his signature to the document, and also that date on which his commission expires, as this is a strict requirement of the Patent Office.

The signed application should be returned to me in the enclosed envelope, together with a postal money order or a certified check in the sum of \$30.00, made payable to THE COMMISSIONER OF PATENTS, which will constitute the government filing fee.

Upon receipt of the papers, properly executed, I will deliver your application to the Patent Office for filing.

A copy of the complete application is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

Exhibit 7(h)

[Letterhead omitted]

March 26, 1962  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Application for Patent on Ferrometer-Metal Detector

Dear Mr. Edgar:

This is to advise that your application has been delivered to the Patent Office, and that your filing date will appear as March 26, 1962.

In approximately three weeks, you will receive a small blue slip from the Patent Office, acknowledging receipt of your application and the government filing fee. Please let me know the serial number which will appear on that slip, and the number of the division to which your application has been assigned, in order that I may complete my records in the case.

It will be at least several months before you may expect to receive any action from the Patent Office examiner in connection with your application. Please, do not attempt to reply to Patent Office communications yourself. You should contact me immediately when you receive an action from the examiner, and send me a copy of the action for further instructions.

Now that your application has been filed in the Patent Office, you may proceed with the manufacture, sale, or promotion of your invention, marking it "Patent Pending" or "Patent Applied For."

Thanking you again for this opportunity to be of service,  
I am

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH:dd

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**Exhibit 7(i)**

[Letterhead omitted]

August 23, 1963  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Pending Application for Patent on "Ferrometer".  
Metal Detector

Dear Mr. Edgar:

Thank you for sending me a copy of the Examiner's action dated August 16, 1963 in connection with your pending application for patent.

Very often the examiner will reject all of the claims in his first action. He does so in order to draw argument from the inventor. It is then up to the inventor to have an amendment prepared and filed in the Patent Office, which will overcome the objections of the Examiner to the application as filed, avoid the references cited by the Examiner, add or delete claims if necessary, and attempt to bring the case into condition for allowance. This is normal patent procedure, and you should not be discouraged by the Examiner's comments, as every application must be fully prosecuted.

My fee for preparing the required amendment responsive to the Examiner's action will be \$45.00. Promptly on re-

ceipt of your remittance in this amount, copies of the references which have been cited by the Examiner will be ordered, and the case will be turned over to my specification writer for preparation of the amendment.

The Patent Office allows the inventor six months' time from the date of the Examiner's action in which to file his amendment. Your amendment must therefore be filed in the Patent Office no later than February 16, 1964, or your application will go abandoned.

Please allow at least 90 days for completion of the amendment. It may take some time to obtain copies of the references which have been cited and to review the entire application before amending the case.

The amendment will be sent to you for signature before the due date.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH/nb

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Exhibit 7(j)

[Letterhead omitted]

April 20, 1964  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Pending Application for Patent on Metal Detector

Dear Mr. Edgar:

Thank you for your letter of April 14, with which you enclosed a copy of the Examiner's action dated April 9,

1964 in connection with your above identified pending application for patent.

It will, of course, be necessary that another amendment be prepared and forwarded to the Patent Office for filing in response to the action of April 9, 1964. This amendment must be filed in the Patent Office no later than October 9, 1964. My fee for preparing the amendment will be \$45.00, and promptly on receipt of your remittance in this amount, the amendment will be prepared and forwarded to you for signature. Any additional description, assembly drawings, photographs, parts list and verified proof of operation would certainly be helpful in amending the case.

Please allow at least 90 days for preparation of this amendment.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH/mw

---

**Exhibit 7(k)**

[Letterhead omitted]

February 10, 1964  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Pending Application for Patent on "Ferrometer"-  
Metal Detector

Dear Mr. Edgar:

We have prepared an amendment in response to the Office action dated August 16, 1963, and the papers are enclosed herein for your signature.

Please sign the enclosed amendment in the space provided, and return it to me as promptly as possible, in order that I may deliver it to the Patent Office for filing. This amendment must be filed in the Patent Office no later than February 16, 1964, or the application will go abandoned.

A copy of the amendment is also enclosed for your files.

Please do not delay signing and returning this amendment IMMEDIATELY by air-mail.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

AH/mw  
Enc.

---

Exhibit 7(1)

[Letterhead omitted]

March 13, 1964  
C-2036

Mr. Irvin T. Edgar  
516 South Huntington Avenue  
Monterey Park, California

Re: Pending Application for Patent on Ferrometer-  
Metal Detector

Dear Mr. Edgar:

We have prepared an amendment in response to the Office action dated February 28, 1964, and the papers are enclosed herein for your signature.

Please sign the enclosed amendment in the space provided, and return it to me as promptly as possible, in order that I may deliver it to the patent Office for filing. This

amendment must be filed in the Patent Office no later than March 19, 1964, or the application will go abandoned.

A copy of the amendment is also enclosed for your files.

Sincerely yours,

/s/ ANN HASTINGS  
Ann Hastings

Enc.

AH/mw

P. S. Please do not delay in signing and returning the enclosed to me by return AIR MAIL — SPECIAL DELIVERY — IMMEDIATELY, in the enclosed envelope.

BRIEF AND APPENDIX FOR APPELLEE

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United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,413

---

ANN HULL, a/k/a ANN HASTINGS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

---

Appeal from the United States District Court  
for the District of Columbia

---

United States Court of Appeals

for the District of Columbia

FILED JUN 22 1967

*Nathan J. Paulson*  
CLERK

DAVID G. BRESS, *OV*  
*United States Attorney.*

FRANK Q. NEBEKER, *OV*  
DAVID N. ELLENHORN, *OV*  
*Assistant United States Attorneys.*

LAWRENCE S. MARGOLIS, *OV*  
*Special Assistant*  
*United States Attorney.*

Cr. No. 266-66

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### QUESTION PRESENTED

Whether a person who is not registered to practice before the United States Patent Office and who offers to prepare and does prepare and file patent applications for inventors violates the criminal statute 35 U.S.C. § 33 prohibiting a person not recognized to practice before the Patent Office from holding herself out as being qualified to prepare or prosecute applications for patent.

## INDEX

	Page
Counterstatement of the case .....	1
Statutes involved .....	7
Summary of argument .....	8
<b>Argument:</b>	
I. Appellant was not recognized to practice before the United States Patent Office and held herself out as being qualified to prepare or prosecute applications for patent .....	9
II. The plain meaning of the statute is that it applies to a person who holds herself out as being registered with the Patent Office or who holds herself out as qualified to prepare or prosecute applications for patent .....	11
III. Appellant's contention that an unqualified person can establish herself in the business of preparing patent applications if she does not use the word "registered" would lead to absurd results and be contrary to the public interest .....	12
IV. The purpose of 35 U.S.C. Section 33 is to protect inventors from unqualified persons who practice patent law .....	13
V. Under 35 U.S.C. Section 33, engineers, draftsmen and other persons may still assist persons in the preparation of a patent application without violating the statute .....	16
Conclusion .....	17

## TABLE OF CASES

* <i>Born v. Allen</i> , 110 U.S. App. D.C. 217, 291 F.2d 345 (1960) ..	12
* <i>Hengesbach v. Hengesbach</i> , 73 App. D.C. 1, 114 F.2d 345 (1940) .....	14
* <i>Topliff v. Topliff</i> , 145 U.S. 156, 171 (1892) .....	12
<i>United States v. Blasius</i> , Information 63 Cr. 836 (S.D.N.Y. 1963) .....	9

## OTHER REFERENCES

37 C.F.R. Sec. 1.345 .....	3
<i>Changing Times</i> , The Kiplinger Magazine, November, 1962 ..	13

## II

### Other References—Continued

Page

Soliciting Patent Business: Unauthorized, Unethical, or Unimpeachable by David S. Urey, 8 South Texas Law Journal 1, 1965, p. 3, footnote 15 .....	14
Hearings before the House Committee on Patents, 74th Cong., 1st Sess. 10 (1935) .....	15
H. R. Rep. No. 2007, 75th Cong., 3rd Sess. (1938) .....	15
81 Cong. Rec. 4630 (1937) .....	15

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\*Cases chiefly relied upon are marked by asterisks.

# **United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 20,413**

---

**ANN HULL, a/k/a ANN HASTINGS, APPELLANT**

***v.***

**UNITED STATES OF AMERICA, APPELLEE**

---

**Appeal from the United States District Court  
for the District of Columbia**

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**BRIEF FOR APPELLEE**

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## **COUNTERSTATEMENT OF THE CASE**

Appellant was indicted on 11 counts on March 14, 1966, under a criminal statute prohibiting the unauthorized practice of patent law before the United States Patent Office. At a non-jury trial before Judge Edward M. Curran on May 17 and 18, 1966, appellant was found guilty on all 11 counts. Appellant was placed on probation for five years provided she suspend her present illegal activities.

She then appealed to this Court. After appellant filed her brief, the appellee moved to remand the record to the

U. S. District Court for special findings of fact. By order dated March 8, 1967, this Court remanded the record to the District Court with directions to make special findings of fact but still retained jurisdiction. On April 21, 1967, Judge Curran made the special findings of fact. The original record and supplemental record containing the remand proceedings were filed in this Court on May 5, 1967.

The first witness for the Government was Samuel William Cochran, a Law Examiner in the Office of the Solicitor, United States Patent Office. He testified that the rolls of the Patent Office showed that Ann Hull, also known as Ann Hastings, was not a registered patent lawyer or patent agent (Tr. 14, 15). He testified to the following. A patent attorney is a person who is an attorney-at-law and registered to practice before the Patent Office (Tr. 15). A patent agent is a person registered to practice before the Patent Office but who is not an attorney-at-law (Tr. 15). Patent attorneys and patent agents determine what is the invention of the inventor (Tr. 17). They make searches through the prior art (previously issued United States patents and existing literature) to determine whether it is in the best interest of the inventor to file a patent application (Tr. 17). After the patent search is made, the attorney or agent advises the inventor of the results of the search and informs him whether it would be in his interest to file a patent application in view of the prior art and would prepare the application if the inventor so authorizes him (Tr. 19). Preparation of the patent application involves writing a patent specification (which describes the invention), and writing "claims" that properly summarize what the inventor thinks he has invented (Tr. 19). After the patent application has been signed by the inventor, the patent application is filed in the Patent Office by the patent attorney or patent agent or the inventor if he represents himself (Tr. 20). The application is then examined by the Patent Office Examiner who allows or rejects the application. If the application is rejected, the applicant may

amend the claims of the application to avoid the prior art that has been cited or can make an argument that he thinks the prior art is not pertinent (Tr. 20, 21). The patent attorney or patent agent prepares the amendment to the patent application and determines how the claims can be amended to avoid the prior art so that the claims will not describe what is old but will describe something which is not obvious (Tr. 21). In order to become registered to practice before the Patent Office, one must have a degree in engineering or physical science from an accredited college or university or the equivalent of such a degree (Tr. 21). A six-hour examination is given on Patent Office practice and law and on the writing of patent claims (Tr. 22). Fifty per cent of those who take the examination fail (Tr. 22, 23). Ninety-seven per cent of the inventors who submit patent applications to the United States Patent Office are represented by a patent attorney or patent agent although an inventor can submit an application without anyone representing him (Tr. 23). Most inventors recognize that patent law is complex and don't feel qualified to undertake this practice, and therefore, hire an expert (Tr. 23, 24). Most inventors realize that getting the patent is not the important thing, but that the important thing is to get a patent that is worth something. This takes the expertise of someone who has long experience in the field to draft claims that will give adequate protection to the inventor (Tr. 24).

Cochran further testified that registered patent attorneys and patent agents are forbidden to advertise their patent services by 37 C.F.R. Sec. 1.345 (Tr. 25). During the period December 8, 1964 to June 9, 1965, Ann Hastings, who is neither a registered patent attorney nor patent agent, assisted 67 inventors (Tr. 29). A person becomes qualified to practice before the Patent Office after he has passed the examination and has shown that he is of good moral character, and the Commissioner of Patents approves the application for registration (Tr. 38).

Mrs. Diane Frankuowski testified that she worked for the appellant between 1960 and 1963 as a secretary at

711-14th Street, N. W., in the District of Columbia (Tr. 44, 45). She further testified that Raymond Smith and Bernard Woodard (sic) conducted patent searches for appellant (Tr. 47, 49). Also Joseph Evans wrote and prepared specifications and claims as part of patent applications for appellant (Tr. 49, 50). It was stipulated that Evans was not and had never been a Patent Examiner or any other employee of the U. S. Patent Office (Tr. 110). Further, a Mr. Hague prepared blueprint drawings that were part of the patent applications for appellant (Tr. 50). Bernard Woodward (Woody) and Mrs. Frankuowski filed the patent applications with the Patent Office (Tr. 51). Amendments to the patent applications were prepared by Mr. Evans (Tr. 51, 52).

Bernard Woodward testified that he worked for appellant continuously from 1949 devoting two-thirds of his time doing patent searching for her (Tr. 53). He further stated that he charged patent attorneys \$15.00 and \$25.00 a search (Tr. 58).

Joseph O. Evans testified that he engaged in "patent development work" and wrote claims and specifications and did searches for appellant (Tr. 60). He prepared these specifications and claims as part of patent applications that would go to inventors (Tr. 61, 62). He stated that he worked for appellant since 1961 and that he had never been registered to practice before the Patent Office (Tr. 62). He failed the test given by the Patent Office in 1942 or 1943 (Tr. 63). He prepared more than one application a month for appellant (Tr. 64). He further stated that he did not attend college (Tr. 65).

Four inventors from Ohio, Texas, Florida and California for whom appellant prepared patent applications also testified at the trial. The first inventor, Mr. Lawrence Belay (sic) from Ohio corresponded by letter with appellant as a result of magazine advertising appearing in *Popular Mechanics* and *Popular Science* (Tr. 69). As a result of that advertisement, appellant conducted a patent search for Mr. Belaj for \$6.00 (Tr. 69, 70, 71). In cor-

respondence with Mr. Belaj dated October 2, 1964, (Government Exhibit 4(a)), appellant stated "... I would be glad to handle the preparation of your official papers. To supervise this work, I employ only graduate engineers who have had at least 15 years experience as Patent Examiners in the United States Patent Office.<sup>1</sup> Your application would be prepared complete, ready for your signature and filing. . . ." Belaj later received a certificate of search (Government Exhibit 4(b)) certifying that his invention appears to be new and patentable and recommending that an application for patent be filed (Tr. 72, 73). Belaj sent appellant \$360.00 to prepare his patent application (Tr. 74). On October 15, 1964, appellant wrote Belaj (Government Exhibit 4(c)) stating: "... I will be very glad to handle the preparation of the official papers for you. My fee for preparing the Specification and Claims, and the official Patent Office drawing will be \$360.00, plus the \$30.00 government filing fee. The papers will be prepared complete, ready for your signature and filing."

"... my draftsmen will prepare the official Patent Office drawing, and you will receive a photoprint copy thereof for your inspection and approval or correction before the Specification and Claims are prepared. From 4 to 6 weeks should be allowed for the preparation of your patent application."

In a letter dated December 29, 1964, (Government Exhibit 4(e)) appellant wrote Belaj as follows: "... Your case is now in the hands of my specification writer for preparation of the Specification and Claims. Just as soon as he has completed his work in the case, the draftsman will ink in the drawing and enter the reference numerals referred to in the Specification. The complete application will then be sent to you for signature."

By letter dated February 12, 1965, to Mr. Belaj, appellant stated: "We have completed the preparation of

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<sup>1</sup> Appellant at p. 24 of her brief states that this statement is true. There is absolutely no evidence in the record supporting this statement.

your application, and the papers are enclosed herein for your signature."

The second inventor who testified for the Government was Rudy Gamblin who lived in Amarillo, Texas. He became acquainted with appellant's service through an advertisement in the Amarillo, Texas phone book (Government Exhibit 5(a)) (Tr. 79).

After various correspondence with Mr. Gamblin, appellant conducted a patent search for him and offered to prepare his application for \$380.00, plus \$30.00 for the government filing fee (Tr. 83). Appellant's correspondence with Gamblin was similar to her correspondence with Belaj offering to prepare his application and in fact preparing it. (See Government Exhibits 5(d), (e), (f), (g), (h), (i).)

The next witness for the Government was Irving Kaufman from Bushnell, Florida, who testified that appellant performed a search for him and prepared a patent application for him (Tr. 92, 95). Kaufman learned about appellant's service in a national magazine (Tr. 100). Appellant's correspondence with Kaufman was similar to her correspondence with the other two inventors. (See Government Exhibits 6(a) to 6(e).) In a letter to Kaufman dated August 21, 1961, appellant stated: "... My fee for preparing the required amendment responsive to the examiner's action will be \$45.00." (See Government Exhibit 6(f).)

In a letter dated May 8, 1962, from appellant to Kaufman she stated: "In preparing a new application on your invention, the Specification and Claims will certainly have to be revised in the light of the examiner's action of August 15, 1961, on your abandoned application. . . ."

"The cost of preparing the new case would be \$250.00, plus the \$30.00 government filing fee. I would require an initial remittance of \$125.00 with your authorization to go ahead with the case." (See Government Exhibit 6(k).)

The final witness for the Government was Irving T. Edgar from Monterey Park, California. Mr. Edgar

learned about appellant's service in "an ad in a magazine like Popular Mechanics" (Tr. 103). Appellant performed a search for him and she prepared a patent application for him (Tr. 104, 105). Appellant prepared two amendments for Edgar for submission to the U. S. Patent Office (Tr. 105, 106). Appellant's correspondence with Edgar was similar to that of the other three inventors. (See Government Exhibits 7(a) to 7(e)).

### STATUTES INVOLVED

35 U.S.C. Section 33 provides:

**UNAUTHORIZED REPRESENTATION AS PRACTITIONER.** Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(Act of July 19, 1952, c. 950, 66 Stat. 796).

The predecessor statute 35 U.S.C. 11(a) provided:

**UNAUTHORIZED REPRESENTATION AS PRACTITIONER: PENALTY.** It shall be unlawful for any person who has not been duly recognized to practice before the United States Patent Office in accordance with the provisions of section 11 of this title and the rules of the Patent Office to hold himself out or knowingly permit himself to be held out as a patent solicitor, patent agent, or patent attorney, or otherwise in any manner hold himself out, either directly or indirectly, as authorized to represent applicants for patent in their business before the Patent Office, and it shall be unlawful for any person who has, under the authority of section 11 of this title been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office or any division thereof;

and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine of not less than \$50 and not exceeding \$500.

(Act of May 9, 1938, c. 188, 52 Stat. 342.)

## SUMMARY OF ARGUMENT

### I

Appellant was not recognized to practice before the United States Patent Office and held herself out as being qualified to prepare or prosecute applications for patent.

### II

The plain meaning of the statute is that it applies to a person who holds herself out as being registered with the Patent Office or who holds herself out as qualified to prepare or prosecute applications for patent.

### III

Appellant's contention that an unqualified person can establish herself in the business of preparing patent applications if she does not use the word "registered" would lead to absurd results and be contrary to the public interest.

### IV

The purpose of 35 U.S.C. Section 33 is to protect inventors from unqualified persons who practice patent law.

### V

Under 35 U.S.C. Section 33, engineers, draftsmen and other persons may still assist persons in the preparation of a patent application without violating the statute.

## ARGUMENT

- I. Appellant was not recognized to practice before the United States Patent Office and held herself out as being qualified to prepare or prosecute applications for patent.

Title 35, Section 33 of the United States Code provides in pertinent part: "Whoever, not being recognized to practice before the Patent Office holds himself out or permits himself to be held out . . . as being qualified to prepare or prosecute applications for patents, shall be fined not more than \$1,000 for each offense."

This is a test case in that it is the first criminal prosecution and conviction in the United States for violation of 35 U.S.C. Section 33.<sup>1</sup>

The thrust of the Government's charge was that appellant, who was not recognized to practice before the United States Patent Office, held herself out as being qualified to prepare or prosecute patent applications. Appellant devised a scheme whereby she would advertise in major magazines, such as *Popular Mechanics* or *Popular Science*, and in telephone directories offering to search through existing United States patents and existing literature to ascertain for inventors whether their inventions were patentable. She offered to do the searches for \$6, well below the amount usually charged by reputable patent attorneys and agents (Tr. 58). After performing a cursory search for prospective inventors, she would send them certificates of search indicating that she believed his invention was patentable. Frequently, she would not find the most pertinent existing United States patent similar to the inventor's device thus inducing inventors to have her prepare their patent applications for several hundred dollars. See Government Exhibit 5(o).

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<sup>1</sup> However, there is a criminal action pending in the United States District Court for the Southern District of New York, *United States v. Blasius*. Information 63 Cr. 836 (S.D.N.Y. 1963).

Although appellant was not registered to practice before the United States Patent Office as a patent attorney or patent agent (Tr. 14, 15), she offered to prepare patent applications comprising specifications, claims and drawings, and also offered to prepare amendments to the patent applications for inventors.

Judge Edward M. Curran at page 2 of his findings of fact filed on April 21, 1967, found that, "The letters introduced into evidence by the Government demonstrate that the defendant held herself out as being qualified to prepare patent applications and amendments to applications."

For example, in the letter of October 2, 1964, from appellant to Lawrence N. Belaj, she said, "... I would be glad to handle the preparation of your official papers. To supervise this work, I employ only graduate engineers who have had at least 15 years experience as Patent Examiners in the United States Patent Office. Your application would be prepared complete, ready for your signature and filing." In a letter to Rudolph D. Gamblin dated June 21, 1962, appellant stated, "We have completed the preparation of your application, and the papers are enclosed herein for your signature." In a letter from appellant to Irving Kaufman dated May 8, 1962, she said, "The cost of preparing the new case will be \$250.00, plus the \$30.00 Government filing fee." In a letter to Irvin T. Edgar dated August 23, 1963, appellant said, "My fee for preparing the required amendment responsive to the Examiner's action will be \$45.00. Promptly on receipt of your remittance in this amount, copies of the references which have been cited by the Examiner will be ordered, and the case will be turned over to my specification writer for preparation of the amendment."

Also the letterhead of appellant's stationery (omitted in appellant's appendix) stated, "Patent Specifications and Amendments" as her field of expertise. Further, on the "Certificate of Search" (Government Exhibit 4(b)), as sent to the inventors, a picture of a building appears in

the upper left-hand corner and under it are the words "United States Patent Office," implying that the search performed by appellant had some official connection with the United States Patent Office.

Appellant in her correspondence with the four inventors said that she employed only graduate engineers who had at least 15 years experience as Patent Examiners in the United States Patent Office. Thus, she held herself out as being qualified to prepare or prosecute applications for patent.

Joseph O. Evans testified that he wrote claims and specifications and did searches for appellant since 1961 and that he had never been registered to practice before the United States Patent Office (Tr. 60, 61, 62). Mrs. Frankuowski, appellant's secretary, testified that Raymond Smith and Bernard Woodward conducted patent searches for appellant (Tr. 47, 49). Not only did appellant hold herself out as being qualified to prepare or prosecute applications for patent but, in fact, her employees did prepare patent applications.

In his findings of fact at page 4, Judge Curran found that "the record of testimony and exhibits conclusively reflects that she did violate the statute by holding herself out as qualified to prepare applications for patent when she clearly was not recognized to practice before the Patent Office."

**II. The plain meaning of the statute is that it applies to a person who holds herself out as being registered with the Patent Office or who holds herself out as qualified to prepare or prosecute applications for patent.**

Appellant contends that 35 U.S.C. Section 33 applies only to persons who falsely hold themselves out as being registered before the United States Patent Office. However, the statute clearly applies to two distinct and different situations. First, a person who is not recognized to practice before the Patent Office and holds himself out as

being registered with the Patent Office violates the statute. Second, a person who is not recognized to practice before the Patent Office and holds himself out as qualified to prepare or prosecute applications for patent violates the statute. If Congress had intended to limit the statute to persons who hold themselves out as recognized to practice before the Patent Office, it would not have added the words "... or as being qualified to prepare or prosecute applications for patent." If appellant's interpretation were followed, these words must be ignored or read synonymously with the first clause of the statute, and therefore, these words are superfluous. Appellee, however, believes that these words are not superfluous but, in fact, state a separate offense. It is an accepted principle that a legislature is presumed to have used no superfluous words. *Born v. Allen*, 110 U.S. App. D.C. 217, 291 F. 2d 345 (1960).

**III. Appellant's contention that an unqualified person can establish herself in the business of preparing patent applications if she does not use the word "registered" would lead to absurd results and be contrary to the public interest.**

Appellant contends that as long as she does not state that she is registered to practice before the Patent Office, she may still transact patent business by advertising her services throughout the United States, prepare patent applications, prepare patent amendments and issue opinions as to the patentability of an invention without her meeting the strict qualifications for registration required by the United States Patent Office.

In *Topliff v. Topliff*, 145 U.S. 156, 171 (1892), it was stated: "The specification and claims of a patent, particularly if the invention be at all complicated, constitute one of the most difficult legal instruments to draw with accuracy, and in view of the fact that valuable inventions are often placed in the hands of inexperienced persons to prepare such specifications and claims, it is no matter of

surprise that the latter frequently fail to describe with requisite certainty the exact invention of the patentee, and err either in claiming that which the patentee, had not in fact invented, or in omitting some element which was a valuable or essential part of his actual invention."

Thus, in view of the difficulty and complexity involved in preparing a patent application, appellant's position would lead to absurd results and be contrary to the public interest. As stated by Mr. Cochran of the United States Patent Office, registered patent attorneys and patent agents are strictly regulated by the United States Patent Office which requires a technical background and examination. (Tr. 21, 22, 23). Such persons are prohibited from advertising their patent services. (Tr. 25). If appellant's position is correct, appellant may advertise her patent services all over the United States leaving the Government helpless and unable to take action against her. It would be a clear distortion of legislative purpose and an absurd position to conclude that Congress intended that appellant could freely offer her patent services to the public while giving the Commissioner of Patent absolute authority over patent attorneys and patent agents.

**IV. The purpose of 35 U.S.C. Section 33 is to protect inventors from unqualified persons who practice patent law.**

The purpose of 35 U.S.C. Section 33 is to protect inventors from exploitation by unqualified patent practitioners.<sup>2</sup> The intent of the statute cannot be evaded by persons who offer patent services merely by not stating they are registered by the Patent Office. Certainly Congress did not intend to permit persons to offer patent services to the public where that person is not qualified to give such service.

Appellant contends that the legislative history of 35 U.S.C. Section 33 supports her interpretation that only

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<sup>2</sup> For a discussion of unscrupulous mail-order patent services, see *Changing Times*, The Kiplinger Magazine, November, 1962.

persons who state they are registered, and are not so registered, violate the statute. However, the legislative history discloses that there were no hearings, reports, or debates which discussed the clause "... or as being qualified to prepare or prosecute applications for patent.<sup>3</sup> Since the meaning of the statute is plain and unambiguous, it is unnecessary to resort to the legislative history which is at best confusing and ambiguous. "Where the language of a statute is plain there is nothing to construe. To give it a meaning different from that expressed by its plain language would be judicial legislation." *Hengesbach v. Hengesbach*, 73 App. D.C. 1, 114 F. 2d 845 (1940). As Judge Curran stated in his findings of fact at page 3, "The word 'qualified' means 'fitted for a given purpose, competent, having complied with the specific requirements or precedent conditions for an office or employment'. Section 33 is clear and unambiguous in its use of the word, and there is no need to seek further clarification from the Congressional history in the instant case." This Court should not reject the plain meaning of the statute unless there is a clear expression of legislative intention that is contrary to its plain meaning. There is no such clear legislative intention shown in the history of the statute.

Assuming *arguendo* that the statute is not plain and unambiguous on its fact, the legislative history supports appellee's interpretation.

35 U.S.C. Section 11(a) (1946 ed.), the predecessor statute to 35 U.S.C. Section 33, provided in pertinent part: It shall be unlawful for any person who has not been duly recognized to practice before the United States Patent Office . . . to hold himself out . . . as a patent solicitor, patent agent, or patent attorney, or otherwise in any manner hold himself out, either directly or indirectly, as *authorized* to represent applicants for patent in their

<sup>3</sup> Soliciting Patent Business: Unauthorized, Unethical, or Unimpeachable? by David S. Urey, 8 South Texas Law Journal 1, (1965), p. 3, footnote 15.

business before the Patent Office, *and* it shall be unlawful for any person who has . . . been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office. . . . (Emphasis supplied.)

At the Congressional hearings on Section 11(a), the then Commissioner of Patents, Conway P. Coe, stated: "The purpose of this bill is to prevent unauthorized practice before the Patent Office. At present, numerous persons who have either been disbarred from practicing before the Patent Office *or* who have never been enrolled to practice there before, advertise themselves as patent attorneys, *solicit patent business*, and otherwise engage in the unauthorized practice before the Patent Office."<sup>4</sup> (Emphasis supplied.)

Substantially the same statement was included in the report which accompanied the bill.<sup>5</sup> In a colloquy which took place on the floor of the Senate between Senator King and Senator McAdoo, the latter stated:

"The measure merely seeks to prevent persons who are not permitted to practice before the Patent Office, *or* persons who have been disbarred from practice before that Office, from holding themselves out as patent attorneys and *as able to assist people applying for patents*. Great abuse has arisen from the fact that many people are *induced by so-called patent attorneys to put their cases in their hands when the so-called attorneys have no authority to practice before the Patent Office*. The sole object of the bill is to prevent such abuses."<sup>6</sup> (Emphasis supplied.)

Thus, former Section 11(a), as does present Section 33, also distinguished between two different situations, i.e., (1) where the practitioner soliciting business has never

<sup>4</sup> Hearings before the House Committee on Patents, 74th Cong., 1st Sess. 10 (1935).

<sup>5</sup> H. R. Rep. No. 2007, 75th Cong., 3rd Sess. (1938).

<sup>6</sup> 81 Cong. Rec. 4630 (1937).

been authorized to practice before the Patent Office and (2) where the practitioner once could practice before the Patent Office, but was subsequently disbarred or excluded. The legislative history cited above supports this interpretation.

Furthermore, as appellant states in her brief at pages 13, 14 and 15, citing the legislative history of Section 33, Section 33 is merely a recodification of former Section 11(a). Thus Section 33 merely simplified the language of former Section 11(a), and both sections have the same intent and meaning.

V. Under 35 U.S.C. Section 33, engineers, draftsmen and other persons may still assist persons in the preparation of a patent application without violating the statute.

The statute is aimed primarily at curtailing the exploitation of naive inventors. Persons, such as appellant, exploit the naive and gullible inventor by advertising their services in national magazines, through the mail and in telephone books. The thrust of the offense under Section 33 is the holding out as being qualified to prepare or prosecute applications for patent.

Engineers, draftsmen and other persons are free to render services to any inventor who comes to them and requests those services. Assistance rendered by such persons cannot be compared with appellant's highly sophisticated, commercial enterprise extending into all corners of the United States. What is prohibited under Section 33 is the "holding out" as being qualified to prepare or prosecute patent applications. Appellant's letters to the four inventors establish that she was holding herself out as being qualified to prepare or prosecute applications for patent. Section 33 does not prohibit persons giving assistance to inventors who file patent applications. However, it does clearly prohibit such persons from *holding themselves out* as being qualified to do so.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID G. BRESS,  
*United States Attorney.*

FRANK Q. NEBEKER,  
DAVID N. ELLENHORN,  
*Assistant United States Attorneys.*

LAWRENCE S. MARGOLIS,  
*Special Assistant*  
*United States Attorney.*

## **APPENDIX**



EXHIBIT 5(a) AMARILLO TEXAS PHONE BOOK

Patent Searchers

Hastings Ann Miss

Free Invention Protection Forms

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EXHIBIT 5(o)

2100 Travis Street  
Amarillo, Texas  
October 1, 1962

Ref.: C-2100

Miss Ann Hastings  
Patent and Trade-Mark Searching  
Post Office Box 176  
Washington 4, D.C.

Dear Miss Hastings:

Enclosed is a copy of the findings of the Examiner on my application for patent.

After all my "invention" was not new and patentable as you have claimed in your correspondences. No claim is allowed. It was worthless. All my time and money were wasted.

Your given Reference Cited: 2,886,828 which was a Plastic Sand Pan for children as the "most pertinent prior patent located in the records of the Patent Office" put me on the wrong track.

Had you found the References as listed on the Examiner's letter, I would have stopped there, and you would have fairly earned the \$6.00. To make matters worse and embarrassing, I have just learned from Chicago that such Drip Pans were currently manufactured in Los Angeles and distributed by the Montgomery Ward & Company outlets.

Owing to your faulty searching, it is fair and honest that you refund the \$380.00 I have mailed you plus the \$30.00 for the government filing fee which should never have been mailed there in the first place.

Yours truly,

/s/ R. G. Gamblin

EXHIBIT 6(j)

Address Only  
The Commissioner of Patents  
Washington 25, D. C.

U. S. DEPARTMENT OF COMMERCE  
PATENT OFFICE  
Washington

March 22, 1962

Mr. Irving Kaufman  
Economy Accessory Products  
825 N. Federal Highway  
Fort Lauderdale, Florida

My dear Mr. Kaufman:

This is in response to your request of March 3, 1962, for advice in connection with your abandoned application for patent, Serial No. 117,147, filed June 14, 1961, entitled "Drapery Hook and Pleat Ruler."

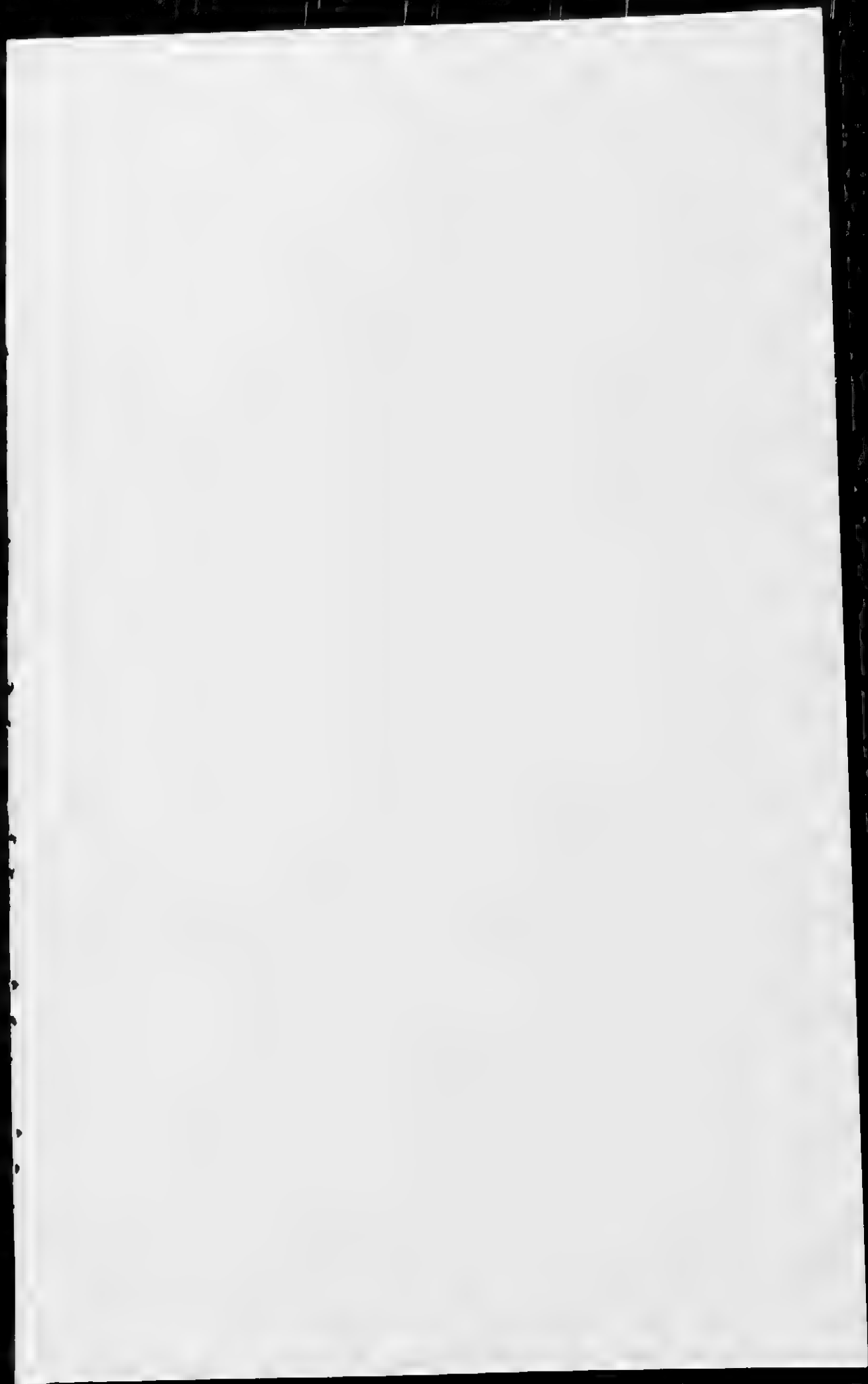
The person with whom you say you have been dealing in connection with your said application is not registered to practice before the Patent Office in accordance with the regulations referred to in the section headed "Attorneys and Agents" beginning on page 10 of the enclosed pamphlet entitled "General Information Concerning Patents." Accordingly, she could not, by law, represent you in your application for patent.

As indicated on page 21 of the pamphlet, an abandoned application may be revived for further consideration by the Patent Office examiner if it can be established that the delay in prosecution was unavoidable. A petition to revive must be supported by a verified showing in excuse of the delay, and must be accompanied by an acceptable

response to the Patent Office examiner's action and by a petition fee of \$10.00.

Very truly yours,

/s/ C. W. Moore  
Solicitor



REPLY BRIEF FOR APPELLANT

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,413**

---

ANN HULL, a/k/a ANN HASTINGS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

---

Appeal From the United States District Court for the  
District of Columbia

---

United States District Court for the District of Columbia  
FILED JUL 2 1967

DONALD CEFARATTI, JR.  
WILLIAM E. CUMBERLAND  
1825 K Street, N.W.  
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CLERK



## INDEX

	Page
Argument .....	2
A. The word "qualified" is used in 35 U. S. C. 33 in its sense of "authorized", or "entitled" .....	2
1. Appellee's characterization that authorized can only mean registered is too simplistic .....	2
2. The regulatory scheme proposed by Congress over patent work is not as all encompassing as appellee suggests .....	2
3. The legislative history reveals that Congress has never agreed to such a broad prohibition as appellee would create by expansion of the proscription of 35 U. S. C. 33 .....	3
B. The Finding of Facts Specially, filed subsequent to submission of appellant's principal brief, reveals that the Trial Court erroneously interpreted "qualified" in its sense of "know-how" or expertise .....	4
Conclusion .....	5

## CITATIONS

### TABLE OF STATUTES:

Act of May 9, 1938, c. 188, 52 Stat. 342 (Formerly U. S. C. Title 35, § 11(a)) .....	3
Act of July 19, 1952, c. 950, § 1, 66 Stat. 795 (U. S. C. Title 35, § 31) .....	2
Act of July 19, 1952, c. 950, § 1, 66 Stat. 796 (U. S. C. Title 35, § 33) .....	2, 3, 4, 5
Act of February 17, 1923, c. 94, 42 Stat. 1261 (District of Columbia Code, Title 2, Sections 2-901 f.f.) ....	3
Act of June 7, 1938, c. 322, 52 Stat. 620 (District of Columbia Code, Title 2, Sections 2-1101 f.f.) ....	3

### MISCELLANEOUS:

Senate Report No. 462, 75th Congress, 1st Session (1937) .....	3, 4
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IN THE  
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v.

UNITED STATES OF AMERICA, *Appellee*.

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Appeal From the United States District Court for the  
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**REPLY BRIEF FOR APPELLANT**

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To correct any misleading impressions which might be created by statements in appellee's brief, to answer certain arguments made by appellee, and to place in prospective Findings of Facts Specially made and submitted subsequent to the filing of appellant's principal brief, appellant submits this reply brief.

## ARGUMENT

### A. THE WORD "QUALIFIED" IS USED IN 35 U. S. C. 33 IN ITS SENSE OF "AUTHORIZED" OR "ENTITLED"

#### 1. Appellee's Characterization That Authorized Can Only Mean Registered Is Too Simplistic

Appellee argues that the word "qualified" in 35 U.S.C. 33 must be interpreted in its sense of "know-how" or ability because to read it as "authorized" would be redundant with the previously employed "so recognized". (Brief of Appellee, Arg. II). This argument rests upon the correct observation that the only way in which a person may actually *be* so recognized is to be *registered* with the Patent Office and then proceeds, incorrectly, to preclude the possibility that the public may not be aware that this form of approval is unique.

Rather than being redundant, the "qualified" proscription in the sense of "approved" serves the valuable purpose of covering the representation which indicates indirect approval. In short, the phrase "as being qualified" is a catch-all provision to cover those who would misrepresent some official connection and certification, while clearly saying they were not a registered patent attorney or agent.

#### 2. The Regulatory Scheme Proposed by Congress Over Patent Work Is Not as All Encompassing as Appellee Suggests

Appellee argues that patent work is complex and difficult, and that public policy would best be served by totally forbidding entry into that area to all who have not become registered with the Patent Office. (Brief of Appellee, Argument III). Whether that is so is a matter for Congress to decide, and Congress has not given the Patent Office supervision of all patent business. The Patent Office has power only to "prescribe regulations governing the recognition and conduct of agents, attorneys or other persons *representing* applicants or other parties before the Patent Office . . ." 35 U.S.C. 31, (66 Stat. 795) (emphasis

added). The power to regulate all persons rendering advice and assistance was not given by Congress. Nor, when the punitive provision of 35 U.S.C. 33 was adopted, did Congress prohibit non-registered persons from acting in the field of patent work. Congress did not say if a person is unregistered that that person may not perform patent services; it said if a person is not registered, they may not represent to others that they are registered or indicate that they have official approval of any sort.

This distinction is a clear one, found in other certifying schemes. For example, in the District of Columbia, any person is permitted to act as an accountant, but only a person certified as a public accountant is permitted to hold himself out as a certified public accountant. District of Columbia Code, Title 2, Section 2-901, 902, 909. (1961 ed.) Appellee would convert a misrepresentation statute to a prohibition statute. Compare: D. C. Code Title 2, Section 2-1101, 1102, 1114 (1961 ed.)

**3. The Legislative History Reveals That Congress Has Never Agreed to Such an All Encompassing Prohibition as Appellee Would Create by Expansion of the Proscription of 35 U. S. C. 33.**

Appellee argues that the legislative history of 35 U.S.C. 33 and of its predecessor, 35 U.S.C. 11(a) (52 Stat. 342) indicate an intention of Congress to prohibit all unregistered persons from conducting patent work. (Brief of Appellee, Argument IV) The history does show the Act was designed to protect inventors, of course, but not to protect them to the extent of removing from them their own decision to use an officially approved patent agent or not. The Act was adopted to "control . . . fraud and deception . . .". Letter of Commissioner of Patents, Conway Coe, Senate Report No. 462, 75th Cong. 1st Sess. (1937). The prohibition adopted was "not as sweeping as the familiar Cramton bill often introduced into Con-

gress heretofore". *Ibid.* The Cramton Bills would have done what appellee argues should be done. Fortunately, Congress did not agree to do what appellee argues should be done.

**B. THE FINDING OF FACTS SPECIALLY, FILED SUBSEQUENT TO SUBMISSION OF APPELLANT'S PRINCIPAL BRIEF, REVEALS THAT THE TRIAL COURT ERRONEOUSLY INTERPRETED "QUALIFIED" IN ITS SENSE OF "KNOW-HOW" OR EXPERTISE**

In its Finding of Facts Specially, (Memorandum, filed April 21, 1967) the Trial Court defined "qualified" as "fitted for a given purpose, competent, having complied with the specific requirements or precedent conditions for an office or employment". (P. 3) This definition admits two meanings in that "fitted" and "competent" connote ability or expertise, while the remaining categories connote official sanction, but it is clear from the facts found that the Court relied upon the ability or expertise connotation in finding violation of 35 U.S.C. 33.

The facts specially found in support of conviction speak only of a holding out of appellant's "experience" and "expertise".<sup>1</sup> No fact is found that appellant represented any official connection with or approval by the Patent Office. No fact is found that appellant offered to represent inventors before the Patent Office, or that she held herself out as a patent agent or patent attorney. The evidence before the Trial Court reasonably showed a representation of experience and ability, and that is what, and only what the Trial Court found.

---

<sup>1</sup> Appellee and Amicus attempt to infer that appellant did not have anyone with the experience offered to prepare applications. The only man named, Joseph Evans, testified that he drafted specifications, but did not see the final form. The accurate inference is that someone else, with the represented experience, handled the final, supervisory, preparation. The Trial Court properly considered the question irrelevant and did not pursue it.

**CONCLUSION**

In conclusion, appellant submits that the holding out penalized by 35 U.S.C. 33 is a mis-representation that a person is registered with the Patent Office or is in any other manner approved by that Office to carry on patent work; that the Trial Court interpreted this penal statute more broadly to include a holding out of experience and ability on the part of one not recognized by the Patent Office to practice before it; that the Trial Court found appellant guilty under this erroneous broader interpretation; and that this Court should reverse the judgment of conviction entered below and direct the entry of a judgment of acquittal, or, in the alternative, remand the case for a new trial.

Respectfully submitted,

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1825 K Street, N.W.  
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*Attorneys for Appellant*



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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 20,413**

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**ANN HULL, a/k/a ANN HASTINGS, *Appellant***

**v.**

**UNITED STATES OF AMERICA, *Appellee***

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**Appeal from the United States District Court for the  
District of Columbia**

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United States Court of Appeals  
for the District of Columbia Circuit

**BRIEF AMICUS CURIAE**

**of**

**FILED JUN 16 1967 American Patent Law Association**

**and**

**Bar Association of the District of Columbia**

*Nathan J. Rosenberg*  
CLERK

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### STATEMENT OF QUESTION PRESENTED

Whether a person, not registered before the Patent Office, who by advertising, letters or otherwise, offers to prepare and does, in fact, prepare complete patent applications including all necessary papers for an inventor to sign and file in the Patent Office, violates 35 USC 33, which provides a fine for

“Whoever, not being recognized before the Patent Office, holds himself out or permits himself to be held out as so recognized or *as being qualified to prepare or prosecute applications for patent . . .*”. (Emphasis supplied)



## INDEX

	Page
<b>STATEMENT OF QUESTION PRESENTED.</b>	
I. NATURE OF <u>AMICUS</u> APPEARANCE AND AUTHORITY TO FILE .....	1
II. BACKGROUND OF CASE .....	2
III. THE INTEREST OF <u>AMICUS</u> IN THIS CASE .....	6
IV. THE POSITION OF APPELLANT .....	7
V. THE POSITION OF <u>AMICUS</u> .....	7
VI. ARGUMENT .....	8
A. To Construe the Statute To Prevent Only the Holding Out of "Recognition" To Practice Before the Patent Office Would Be Unreasonable Because It Must Be Assumed Congress Intended To Give Meaning To All Parts of the Statute; It Necessarily Follows That Congress Was Proscribing the Holding Out of the "Know-How" To Prepare and Prosecute Patent Applications; Resort To Legislative History Is Unnecessary Since the Statute Is Unambiguous .....	8
B. Appellant's Contention That the Interpretation of "Qualified" To Mean "Know-How" Would Lead to An Absurd Result Is Unfounded .....	10
1. Because of the Special Expertise Required for the Preparation of the Specification and Claims of a Patent Application and in Its Prosecution, It Would Be Logical Rather Than Absurd for Congress To Have Precluded Engineers, Technicians, General Attorneys or the Like From Holding Themselves Out as Qualified To Prepare or Prosecute Patent Applications Unless Recognized by the Patent Office .....	10

	Page
2. Mere Drafting, Stenographic or Like Activities Are in a Different Category and Are Not Covered by the Statutory Language ...	15
C. The Legislative History of 35 U.S.C. 33 .....	16
1. Appellant's Position .....	16
2. The Legislative History of 35 U.S.C. 33 Is Replete with Contradictions and Confusion, Rendering It Incapable of Revealing the Legislative Will .....	17
D. An Interpretation of 35 U.S.C. 33 To Cover Only the Holding Out of Recognition To Practice Before the Patent Office Would Lead to Absurd Results .....	22
VII. CONCLUSION .....	25

## INDEX OF CITATIONS

### TABLE OF CASES:

<i>Born v. Allen</i> , 110 U.S. App. D.C. 217, 291 Fed. 2d 345 (1960) .....	9
<i>Brenner v. Manson</i> , 383 U.S. 519 (1967) .....	12
<i>Edison v. American Multiscope Co.</i> , 114 Fed. 926 (1902) .....	11
<i>Eli Lilly &amp; Co. v. Brenner</i> , — U.S. App. D.C. —, 153 USPQ 95 (1967) .....	12
<i>Exhibit Supply Co. v. Ace Patents Corp.</i> , 315 U.S. 126 (1942) .....	12
<i>Gamblin v. Hastings</i> , County Court at Law, Potter County, Texas, Case No. 4573 .....	7
<i>Gamblin v. Hastings</i> , D.C. Court of Appeals, Appeal No. 4235 .....	7
<i>Gamblin v. Hastings</i> , D.C. Court of General Sessions, Civil Action No. GS 1900-64 .....	7
<i>General Electric Co. v. Wabash Appliance Corp.</i> , 304 U.S. 364 (1938) .....	11
<i>Hays v. Brenner</i> , 123 U.S. App. D.C. 96, 148 USPQ 365 (1966) .....	12

	Page
<i>Helvering v. City Bank Farmers Trust Co.</i> , 296 U.S. 85 (1935) .....	16
<i>Hengesbach et al. v. Hengesbach</i> , 73 App. D.C. 1, 114 F. 2d 845 (1940) .....	9
<i>Hubbell v. United States</i> , 179 U.S. 77, 80 (1900) .....	12
<i>McClain v. Ortmyer</i> , 141 U.S. 419 (1891) .....	11
<i>O'Reilly v. Morse</i> , 56 U.S. (How.) 62 (1853) .....	11
<i>Railroad Commission v. Chicago, B. &amp; Q. R.R. Co.</i> , 257 U.S. 563, 589 (1922) .....	16
<i>Topliff v. Topliff</i> , 145 U.S. 156, 171 (1891) .....	14
<i>United Carbon Co. v. Binney &amp; Smith Co.</i> , 317 U.S. 228, 55 USPQ 381 (1942) .....	11
<i>U.S. v. Blasius</i> , 1964 C.D. 254, 141 USPQ 438 (1964) ..	6.9
<i>United States v. Shreveport Grain &amp; Elevator Co.</i> , 287 U.S. 77, 83 (1932) .....	16

## TABLE OF STATUTES:

Act of May 9, 1938, c. 188, 52 Stat. 342 (Formerly U.S.C. Title 35, § 11(a)) .....	16, 17, 19, 20, 21
Act of July 19, 1952, c. 950, 66 Stat. 796 .....	18
Public Law 89-332 (1965), § (d) .....	14
Title 35 U.S. Code .....	12
35 U.S.C. 31 .....	2, 13, 14, 23
35 U.S.C. 32, July 19, 1952, c. 950, § 1, 66 Stat. 795 ....	2
35 U.S.C. 33 .....	5, 6, 7, 8, 9, 10, 15, 16, 17, 20, 21, 22, 23, 24, 25
35 U.S.C. 112 .....	11
35 U.S.C. 113 .....	15
35 U.S.C. 135 .....	12

## TABLE OF RULES:

Patent Office Rules 201-286; 37 CFR 1.201-1.286 .....	12
Patent Office Rule 341; 37 CFR 1.341 .....	3, 13
Patent Office Rules 341-348; 37 CFR 1.341-1.348 .....	2
Patent Office Rule 343; 37 CFR 1.343 .....	4
Patent Office Rule 344; 37 CFR 1.344 .....	3, 24
Patent Office Rule 345; 37 CFR 1.345 .....	3, 23
Rule 18(j)(2), U.S. Court of Appeals for the District of Columbia Circuit .....	2

TABLE OF TEXTS AND ARTICLES:	Page
2 SUTHERLAND, STATUTORY CONSTRUCTION, Sec. 4502 (3d ed. 1943) .....	16
"Soliciting Patent Business: Unauthorized, Unethical, or Unimpeachable?", by David S. Urey, American Bar Association <i>Unauthorized Practice News</i> , Spring 1966. Vol. No. 1, pp. 24-47 .....	20
MISCELLANEOUS:	
ABA Canons of Ethics, Canon 35 .....	3
H.R. 3760, 82nd Cong., 1st Sess., April 18, 1951 .....	21
Hearing on H.R. 5527 before the House Committee on Patents, 70th Cong., 1st Sess., 1928, pp. 6, 11 ....	18
Hearing on H.R. 5811 before the House Committee on Patents, 69th Cong., 1st Sess., 1926, p. 4 .....	18
H.R. 5811	
H.R. 6117, 74th Cong., 1st Sess., 1935 .....	19
H.R. 9133, 81st Cong., 2d Sess., July 17, 1950 .....	21
S. 477, 75th Cong., 1st Sess., 1937 .....	17, 19

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**BRIEF AMICUS CURIAE**

of

**American Patent Law Association**

and

**Bar Association of the District of Columbia**

---

**I. NATURE OF AMICUS APPEARANCE AND  
AUTHORITY TO FILE**

The American Patent Law Association is an association of approximately 3,000 lawyers representing most of the states and the District of Columbia who are interested in the laws relating to patents and allied subjects. Its mem-

bership represents approximately half of the patent lawyers in the entire country.

The Bar Association of the District of Columbia is an association of approximately 4,000 lawyers who are members of the Bar of the District of Columbia, and approximately 300 of its members are patent lawyers.

This *amicus* brief is presented to the Court jointly on behalf of these two associations under Rule 18(j)(2), pursuant to the Court's order of May 18, 1967.

## II. BACKGROUND OF CASE

Under the authority granted him by 35 U.S.C. 31 and 32<sup>1</sup>, the Commissioner of Patents has promulgated Patent Office Rules 341-348<sup>2</sup> (37 CFR 1.341-1.348) governing the recognition and conduct of those who desire to represent others in the preparation and prosecution of applications

---

1 35 U.S.C. 31 provides that: "The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice and assistance in the presentation or prosecution of their applications or other business before the Office." 35 U.S.C. 32 provides that: "The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under Section 31 of this title, or who shall, by word, circular, letter or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded. July 19, 1952, c. 950 § 1, 66 Stat. 795.

<sup>2</sup> Hereafter "Patent Office Rule" followed by its number.

for patent. Under these rules (with certain exceptions not relevant to this case), each person desiring to be recognized before the Patent Office must "establish to the satisfaction of the Commissioner that he is of good moral character and of good repute and possessed of the legal and scientific and technical qualifications necessary to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the preparation and prosecution of their applications before the Patent Office. \* \* \* " (Patent Office Rule 341; 37 CFR 1.341) Toward this end, the Commissioner subjects applicants with scientific educations or backgrounds to a comprehensive six hour examination designed to test the qualifications of applicants. Those who pass such examinations (approximately 50 per cent of those taking them; Tr. 22, 23) and are otherwise qualified are admitted to practice before the Patent Office and may represent others in the preparation and prosecution of patent applications. (See Gov't. Exh. 1)

Persons recognized to practice before the Patent Office are subject to discipline by the Commissioner of Patents and are required to "conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts of the United States." (Patent Office Rule 344; 37 CFR 1.344) Registered practitioners before the Patent Office are not permitted to advertise their services to prospective clients or to solicit business (Patent Office Rule 345; 37 CFR 1.345), just as lawyers are subject to similar restrictions (American Bar Association Canons of Ethics, Canon 35).

For a number of years, *amicus* associations have been aware of the activities of numerous persons who have either been disbarred from or who have never been recognized to practice before the Patent Office yet who engage in an extensive array of activities related to all aspects of the preparation and prosecution of patent applications

without regulation by the Patent Office. Not being registered before the Patent Office and therefore not being subject to its discipline (which prevents soliciting business by advertising), these practitioners advertise widely in nationally distributed magazines (e.g., *Popular Mechanics*, *Popular Science*, etc.) and other media of wide circulation read by inventors and offer to perform a variety of patent-related services. Among the services actually performed by such unregistered practitioners are the complete preparation of patent applications for signing and filing by the inventor, and the preparation of the papers required for the prosecution of such patent applications in the Patent Office also prepared for signing and filing by the inventor.

Because the Patent Office rules would not permit such unauthorized practitioners to represent inventors directly before the Patent Office (Patent Office Rule 343; 37 CFR 1.343), the *modus operandi* of such practitioners has been to prepare all the documents required for the filing of a patent application without taking a power of attorney or representing the inventor on the Patent Office record. In the Patent Office it appears that the inventor is representing himself when in fact the entire application was prepared and even delivered to the Patent Office by the unregistered practitioner. The result is that it appears on the face of the Patent Office record that the inventor is appearing *pro se* to solicit a patent and such practitioner who actually prepared the patent application is left free of any Patent Office control on the question of his professional qualifications or conduct.

Appellant in the present case is one of a number of people carrying on unauthorized activities of the type described above, she having never been recognized to practice before the Patent Office. Her general approach to her practice follows the format of her fellow unauthorized practitioners along the lines set forth above as may

be seen, for example, by brief reference to the testimony of one of her former clients, one Lawrence Belaj (Tr. 68-77). In response to an advertisement placed by appellant in *Popular Mechanics* and *Popular Science* magazines advertising patent searches for \$6 (Tr. 69), Mr. Belaj wrote to appellant for assistance (Tr. 70). After advising Mr. Belaj of the fact that she would conduct a patentability search, prepare a patentability report and prepare a patent application on his device if she deemed the device new (Gov't. Exh. 4-A), appellant reported the results of a search on Mr. Belaj's device and advised him that it appeared to be patentable and recommended the preparation and filing of a patent application (Gov't. Exhs. 4-B and 4-C), had patent drawings prepared for him (Gov't. Exh. 4-D) and had the complete patent application prepared for his signature (Gov't. Exh. 4-F). The remaining portions of the transcript (Tr. 77-107) and the three other witnesses who were former clients of appellant make it clear that the foregoing steps were in sequence repeated by appellant on a routine basis and normally followed with the filing of the application in the Patent Office and its subsequent prosecution, all ostensibly by the inventor *pro se* though *all* of the necessary papers were prepared by or through appellant.

As a result of her activities, appellant was indicted under eleven counts for violation of 35 U.S.C. 33, which provides that:

Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

Following a two-day trial, appellant was adjudged guilty and convicted by Judge Curran on the ground that she held herself out as qualified to prepare applications for patent when she clearly was not recognized to practice

before the Patent Office.<sup>3</sup> Appellant challenges the validity of her conviction on the ground that the language of 35 U.S.C. 33 was specifically intended to exclude people like herself from its coverage so long as she did not hold herself out as "registered" to practice before the Patent Office or otherwise indicate that she was recognized to practice before the Patent Office. *Stripped of all its gloss, therefore, this appeal presents the question of whether or not appellant and others similarly situated are to be permitted to do by indirection what the statute clearly precludes them from doing directly.*

Since appellant's conviction represents the first time that anyone engaged in the type of patent practice carried on by appellant has ever been tried and convicted under 35 U.S.C. 33 or any corresponding statute<sup>4</sup>, the foregoing issue is one of first impression for this Court.<sup>5</sup>

### III. THE INTEREST OF AMICUS IN THIS CASE

*Amicus* associations are vitally interested in this case because they feel that activities of the type carried on by appellant, unregulated as they are by either the Patent Office or any other constituted authority, have led to great abuses including the deception and defrauding of

<sup>3</sup> See the penultimate paragraph of the special findings of fact prepared by Judge Curran on remand of this case to the District Court. These findings lay to rest the contentions on pages 7-10 of appellant's brief that the District Court based its decision on the finding that appellant merely physically deposited or filed patent applications in the Patent Office, as distinguished from having the applications prepared.

<sup>4</sup> It is to be noted that another one of such unauthorized practitioners, one Harold Lawrence Blasius, is presently awaiting trial for alleged violation of 35 U.S.C. 33 in the United States District Court for the Southern District of New York. While the *Blasius* case has not yet gone to trial, the court handling the case has denied a defense motion to dismiss the indictment. 1964 C.D. 254, 141 USPQ 438 (1964).

<sup>5</sup> The essence of appellant's argument before this court, that the statute under which she was convicted was ambiguous, was expressly rejected by the N.Y. District Court in the *Blasius* case (see Section VI A *infra*).

those most in need of protection by the Government: individual inventors.<sup>6</sup> The questions raised in this case accordingly transcend the specific appellant and are of far-reaching public importance since upon their determination will rest the future ability of the government to regulate practice before the Patent Office and to prevent abuses in such practice.

#### IV. THE POSITION OF APPELLANT

Appellant's argument on this appeal is that the statutory language on the basis of which she was convicted by the court below is both ambiguous and, if interpreted to cover her activities, absurd; that such alleged ambiguity and alleged absurdity requires reference to the legislative history of the statute; and that such legislative history leads to the conclusion that Congress, in its passage of 35 U.S.C. 33, deliberately intended to exclude from its coverage activities of the type carried on by appellant.

#### V. THE POSITION OF AMICUS

Contrary to appellant's position *amicus* believes the language of 35 U.S.C. 33 is quite clear in meaning; that if interpreted in a normal and reasonable manner, it would embrace the activities of appellant; that as so interpreted its application to appellant would be completely reasonable; that in light of the foregoing, resort to the legislative history of the statutory language is inappropriate; and

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<sup>6</sup> The record in this case is liberally sprinkled with evidence of appellant's deceptions. See Section VI D. of this brief. The Court might also take judicial notice of an undefended civil judgment which was obtained by one Rudolph Gamblin (a Government witness in this case; Tr. 78-90) against appellant based on fraud perpetrated by the latter in the performance of the same activities involved in this case. *Gamblin v. Hastings*, County Court At Law, Potter County, Texas, Case No. 4573. (A judgment was obtained by Mr. Gamblin for monies due under the Texas judgment in the D.C. Court of General Sessions, Civil Action No. GS 1900-64. An appeal by appellant from such judgment is now before the D.C. Court of Appeals under Appeal No. 4235.)

that in any event, the legislative history of 35 U.S.C. 33 does not resolve any potential ambiguities but would create such ambiguities. These contentions of *amicus* will be developed in the ensuing portions of this brief.

## VI. ARGUMENT

### A. To Construe the Statute to Prevent Only the Holding Out of "Recognition" to Practice Before the Patent Office Would Be Unreasonable Because It Must Be Assumed Congress Intended to Give Meaning to All Parts of the Statute; It Necessarily Follows That Congress Was Proscribing the Holding Out of the "Know-How" to Prepare and Prosecute Patent Applications; Resort to Legislative History Is Unnecessary Since the Statute Is Unambiguous

The specific statutory language invoked by the District Court in support of its holding prevents one not recognized to practice before the Patent Office from holding himself out or permitting himself to be held out "as being qualified to prepare or prosecute applications for patent \* \* \*." In arguing that her conviction should be set aside, appellant contends that the statutory language in question is ambiguous in that the proscription against the holding out of one as "qualified" to prepare or prosecute patent applications can be used in one of two alternative senses: as meaning (a) "know-how or ability" to prepare or prosecute or (b) "authorized or approved" to prepare or prosecute such applications. (Appellant's Brief<sup>7</sup> 12) In the development of the arguments in her brief, appellant makes it amply clear that she employs the definition "authorized or approved" as one of the two alternative meanings of "qualified" in the sense of being recognized to practice before the Patent Office. (Hull Bf. 11, 16-23) It necessarily follows that if this second alternative definition of "qualified" is accepted as one of the two possibilities

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<sup>7</sup> Hereafter "Hull Bf."

of the meaning of the statutory language, 35 U.S.C. 33 would, in full effect, be rewritten as follows:

Whoever, not being *recognized to practice before the Patent Office*, holds himself out or permits himself to be held out as *so recognized*, or as being *recognized to practice before the Patent Office*, shall be fined not more than \$1,000 for each offense. (Emphasis supplied)

In short, such interpretation of 35 U.S.C. 33 would lead to the conclusion that the latter portion of the section meant exactly the same thing as the first portion and, as such, it is mere surplusage. Such a construction is clearly contrary to basic rules of statutory interpretation which presume that language is not surplusage in a statute. *Born v. Allen*, 110 U.S. App. D.C. 217, 291 Fed. 2d 345 (1960). Thus, elementary rules of statutory construction manifestly require rejection of that one of the two definitions of "qualified" which makes for redundancy and surplusage. It necessarily follows that when Congress referred to the holding of oneself out as being "qualified to prepare or prosecute applications for patent" it was talking of the holding of oneself out as having the "know-how" to prepare or prosecute applications for patent. There is clearly no ambiguity in the statutory language<sup>8</sup> and, accordingly, resort to the legislative history of 35 U.S.C. 33 is quite obviously inappropriate. Where the language of a statute is plain there is nothing to construe. *Hengesbach et al. v. Hengesbach*, 73 U.S. App. D.C. 1, 114 F. 2d 845 (1940).

<sup>8</sup> While the decision of the N. Y. District Court in the *Blasius* case (*U.S. v. Blasius*, 1964 C.D. 254, 141 USPQ 438) is not binding on this Court, it is to be noted that Judge Cannella expressly found no ambiguity in the language of Section 33 in denying the defense motion to dismiss the indictment. The defendant's argument as to the ambiguity of Section 33 in *Blasius* substantially paralleled appellant's argument in this case.

**B. Appellant's Contention That the Interpretation of "Qualified" to Mean "Know-How" Would Lead to an Absurd Result Is Unfounded**

But appellant urges that if the word "qualified" in 35 U.S.C. 33 is interpreted as meaning "know-how", it produces an absurd result in that it would bar every non-registered attorney, draftsman, engineer and technician from assisting inventors in any way whatsoever in the preparation or prosecution of patent applications and would compel every inventor to retain a registered patent attorney or agent. Appellant further asserts that such an interpretation is clearly and completely contrary to the intent of Congress as demonstrated by the legislative history of Section 33.

If indeed there were language in 35 U.S.C. 33 sustaining such a contention, *amicus* would be inclined to characterize the statutory scheme as somewhat absurd and, under such circumstances, resort to legislative history to determine Congressional intent might be justified. But the fact of the matter is that the statute includes no language justifying appellant's contention.

1. Because of the special expertise required for the preparation of the specification and claims of a patent application and in its prosecution, it would be logical rather than absurd for Congress to have precluded engineers, technicians, general attorneys or the like from holding themselves out as qualified to prepare or prosecute patent applications unless recognized by the Patent Office

The language of 35 U.S.C. 33 does not refer to one who holds himself out as being qualified to provide a ministerial type of supplemental service to another in the preparation or prosecution of applications for patent but only as being qualified "to prepare or prosecute applications for patent". Had language of the former type been employed, there might be some merit to appellant's contention that an absurd result would be produced by construing "quali-

fied" to mean "know-how"; the limited language used, however, leads to a completely rational and meaningful result. In order to appreciate more fully the significance of this distinction, it would be helpful to consider several aspects of patent applications and their prosecution in the Patent Office.

Every patent application must contain two essential ingredients: a written description of the invention which will enable those skilled in the art to practice it and one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor regards as his invention. (35 U.S.C. 112) The value of any patent which issues bears a direct relationship to the manner in which the invention description and the claims are prepared, wholly aside from the particular significance of the invention to which they are directed. The illustrations are limitless in which patents granted on valuable inventions have been invalid because the claims covered more than the protection to which the inventor was entitled [*O'Reilly v. Morse*, 56 U.S. (How.) 62 (1853); *Edison v. American Multiscope Co.*, 114 Fed. 926 (1902)], because the claims did not define the invention in clear and exact terms required by statute [*General Electric Co. v. Wabash Appliance Corp.*, 304 U.S. 364 (1938); *United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 55 USPQ 381 (1942)], etc.

Illustrations may similarly be given of the manner in which the content of the invention description and claims may unduly limit the effectiveness of a patent on what might have been an otherwise meritorious invention, as where an invention described in the specification but not claimed is dedicated to the public. *McClain v. Ortmyer*, 141 U.S. 419 (1891). And since the claims and (to a lesser extent) the specification are often shaped during the prosecution of a patent application, it is equally apparent that the prosecution history of a patent application can

directly affect the value of a patent. *Hubbell v. United States*, 179 U.S. 77, 80 (1900); *Exhibit Supply Co. v. Ace Patents Corp.*, 315 U.S. 126 (1942).

It is generally well recognized by those outside the patent field that the patent practitioner ought to possess proper technical qualifications if he is to do justice to his client's interests in the drafting and development of these essential ingredients of the patent application. It should also be recognized that an equally if not more important qualification is a familiarity with a large body of legal precedents and laws governing patents and their procurement. And this is true not only for the patent lawyer who litigates in the courts but for the practitioner who restricts his practice to the preparation and prosecution of patent applications before the Patent Office.

Consider, for example, the facts that questions of interpretation of the patent laws (Title 35, U.S. Code) arise continually in the prosecution of patent applications [*Brenner v. Manson*, 383 U.S. 519 (1967); *Hays v. Brenner*, 123 U.S. App. D.C. 96, 148 USPQ 365 (1966); *Eli Lilly & Co. v. Brenner*, — U.S. App. D.C. —, 153 USPQ 95 (1967)]; that practice before the Patent Office includes the handling of interferences (which are adversary legal proceedings in every sense of the word) (See 35 U.S.C. 135; See also Patent Office Rules 201-286, 37 CFR 1.201-1.286); and that each week the United States Patent Quarterly contains a multitude of opinions of the courts and the various Patent Office quasi-judicial tribunals materially affecting the preparation and prosecution of patent applications.

As stated by Mr. Cochran, a law examiner in the Office of the Solicitor, United States Patent Office, who testified at the trial below (Tr. 23, 24):

I think most inventors recognize that the patent law is a complex law to administer and to understand.

Most of them understand that there are hundreds of decisions, court decisions, that interpret the law, that there are Rules of Practice the Patent Office has promulgated to fill out the law, books, published books of this kind available that set forth patent examining procedure. Most inventors don't feel qualified to undertake this sort of practice, so they hire an expert.

Not only that, of course, I think inventors realize, too, that getting the patent is not the important thing. The important thing is to get a patent that is worth something, and this takes the expertise of someone who has long experience in the field to draft claims that will give adequate protection to the invention. The Patent Office gives what help it can to individual inventors who come in without help, but in view of the backlog and time spent on this is limited, by and large we have to rely on expertise of those who practice before the Office that claims of proper scope are presented.<sup>9</sup>

Because of the intricacies involved in the preparation of the invention description and the claims of a patent

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<sup>9</sup> See also Gov't. Exh. No. 1, which is a circular entitled "General Requirements for Admission to the Examination for Registration to Practice before the Patent Office." This circular establishes that the examination for registration before the Patent Office tests the applicant's " . . . knowledge and proficiency in patent law, in Patent Office procedure, and in scientific and technical matters such as would be required to render valuable service to the public in the preparation and prosecution of patent applications. The examination thus includes questions requiring an understanding of scientific and technical terminology, an ability to read mechanical drawings, an ability to draft acceptable patent claims, both mechanical and process, and familiarity with patent practice. The examination may also include questions dealing with standards of ethical and professional conduct applicable to registered patent attorneys and agents." While it is true that non-lawyers may be admitted to practice before the Patent Office under the regulations prescribed by the Commissioner pursuant to 35 U.S.C. 31 (Patent Office Rule 341; 37 CFR 1.341), this right to admission is clearly circumscribed (as it is in the case of lawyers) in that they are required to pass the same examination for registration which lawyers are required to take. This examination is designed by the Patent Office to test the applicant's knowledge of the rules governing practice before the Patent Office generally and in all significant respects resembles a typical bar examination.

application<sup>10</sup> as well as in its prosecution, and the great danger of the issuance of a worthless patent (or no patent at all) unless one with the proper composite of background, experience and training is employed for the task, a real, significant and worthwhile social purpose is served by insuring that only those who have demonstrated the requisite qualifications (in the sense of know-how) may hold themselves out as having such qualifications (subject, of course, to the generally accepted right of an individual to represent himself).<sup>11</sup> Since the preparation of the description and claims of a patent application and its prosecution ordinarily require not merely a sound technical background or a fundamental knowledge of the law of patents but a combination of both, *amicus* submits that rather than being absurd, it would be completely logical for Congress to have made a judgment that engineers, technicians, general attorneys<sup>12</sup> or the like ought not hold themselves out as qualified (in the sense of know-how) to prepare or prosecute applications for patent unless they had first demonstrated such qualifications before the Patent Office.

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<sup>10</sup> The Supreme Court has noted that the specification and claims of a patent "constitute one of the most difficult legal instruments to draw with accuracy". *Topkiff v. Topkiff*, 145 U.S. 156, 171 (1891).

<sup>11</sup> Indeed, this restriction on the right of one to practice a given activity is essentially no different from and is based on considerations similar to those involved in other fields where a demonstration of minimum qualifications to perform certain activities satisfactorily is deemed to be in the public interest. Medicine and law represent the most commonly known of such fields.

<sup>12</sup> As recently as 1965 Congress passed a law providing that any lawyer licensed to practice before the highest court of any state may practice before any Federal agency, *except* the Patent Office. Public Law 89-332 (1965). See Section (d) for the Patent Office exception. This establishes further Congressional recognition of the fact that the particular expertise required for practice before the Patent Office deserves special treatment. Such treatment is in fact provided by the authority granted to the Commissioner of Patents under 35 U.S.C. 31 to "prescribe rules and regulations governing the recognition of agents, applicants, attorneys, or other persons representing applicants or other parties" before the Patent Office.

**2. Mere drafting, stenographic or like activities are in a different category and are not covered by the statutory language**

The preparation of patent drawings, stenographic work and other such collateral activities are in a completely different category from the type of activity discussed above. Even though a patent drawing may supplement the written description of an invention and, to that extent, may be deemed a "part" of a patent application<sup>13</sup>, the task of the draftsman is primarily an artistic one which, while requiring a knowledge of the fundamentals of mechanical drawing, is hardly of a nature such that recognition by the Patent Office would be deemed vital. Thus, *amicus* would agree that the interpretation of a statute to prevent a draftsman or a stenographer or another similarly situated from advertising his availability to an inventor as a *stenographer or a draftsman* might be properly characterized as "absurd". As previously indicated, however, the proscription of 35 U.S.C. 33 relates to the holding out of the fact that one is "qualified to prepare or prosecute" patent applications. Since one holding himself out as qualified to prepare drawings for a patent application or as a stenographer capable of typing a patent application could not and would not be seriously considered as holding himself out as qualified "to prepare" or "prosecute" a patent application, it necessarily follows that a patent draftsman, stenographer or others similarly situated would not be covered by any language of 35 U.S.C. 33 for their drafting or stenographic activities if the word "qualified" were used in the sense of "know-how".

In summary, the construction of "qualified" in 35 U.S.C. 33 to mean "know-how" would not, as appellant contends, produce a result which is, in any sense, "absurd". In light of this fact and since the language of 35 U.S.C. 33 is

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<sup>13</sup> Drawings are only required when the nature of the case admits of it (35 U.S.C. 113) and therefore are not contained in many applications on chemical and process subject matter.

clear and unambiguous on its face, conventional rules of statutory construction preclude any resort to the legislative history of the statutory provision. 2 SUTHERLAND, STATUTORY CONSTRUCTION, Sec. 4502 (3d ed. 1943); *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85 (1935); *United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77, 83 (1932); *Railroad Commission v. Chicago, B. & Q.R.R. Co.*, 257 U.S. 563, 589 (1922). Notwithstanding this fact, appellant lays such great stress in her brief on the legislative history of 35 U.S.C. 33 that, in the interest of completeness, *amicus* feels obliged to discuss the subject.

### C. The Legislative History of 35 U.S.C. 33

#### 1. Appellant's position

The essence of appellant's legislative history contentions is that:

- (a) 35 U.S.C. 33 is merely a recodification of former 35 U.S.C. 11(a) and was not intended to effect any substantive changes in the latter which are material to the issues in this case.
- (b) The predecessor statute 35 U.S.C. 11(a) treated those who had been disbarred or excluded from practice before the Patent Office differently from those who had not been so disbarred or excluded and who were holding themselves out either as a patent attorney or as authorized to represent applicants for patent in their business before the Patent Office; the latter were merely prohibited from, in essence, holding themselves out (or permitting themselves to be held out) as being recognized to practice before the Patent Office whereas the former were proscribed from either representing or assisting others in the transaction of business before the Patent Office.
- (c) The proscription in 35 U.S.C. 33 against non-disbarred practitioners (such as appellant) not reg-

istered to practice before the Patent Office holding themselves out as being "qualified to prepare or prosecute applications for patent" was intended to be identical in coverage with that portion of the language of 35 U.S.C. 11(a) relating to non-disbarred practitioners as above stated.

- (d) Since appellant has not held herself out as being recognized to practice before the Patent Office, the Government is powerless to control her activities by the use of 35 U.S.C. 33.

**2. The legislative history of 35 U.S.C. 33 is replete with contradictions and confusion, rendering it incapable of revealing the legislative will**

Were the legislative history of 35 U.S.C. 33 to be as "rich and conclusive" as suggested by appellant (Hull Bf. 13) in leading to the conclusion that Congress never intended to proscribe her type of activity, one might disregard the clear meaning of the statutory language and the normal rules of statutory interpretation. The facts are otherwise, however, for objective study of the legislative history of 35 U.S.C. 33 leaves no doubt but that such history is neither rich nor conclusive. Far from resolving doubts created by appellant's interpretation of the statute, the legislative history compounds them and provides no help in determining what was in the unspoken mind of Congress when it passed 35 U.S.C. 33.

By way of example appellant cites the substance of a colloquy between Senators McAdoo and King on the bill (S. 477, 75th Cong., 1st Sess., 1937) which became 35 U.S.C. 11(a). (Hull Bf. 19-21) Appellant is apparently relying on the dialogue between these two senators to support the proposition that the language of 35 U.S.C. 11(a) dealing with practitioners other than disbarred practitioners was restricted to the holding out of a person being recognized to practice before the Patent Office or its equiva-

lent. Far from proving appellant's point, *amicus* submits that the very legislative history upon which appellant relies demonstrates the total lack of value in a discussion of this type with respect to revealing the true Congressional purpose.

More specifically, counsel for appellant admits that the various Cramton Bills discussed on pages 16 and 17 of her brief were broad enough to embrace the activities which she admittedly carried on and which form the basis for the conviction in this case. (Tr. 12) In short, such bills were admittedly broad enough to cover activities (including those of non-disbarred practitioners) going beyond the holding out of the fact that one was recognized to practice before the Patent Office or was a patent attorney or its equivalent. Notwithstanding this fact, the testimony of key participants in the Congressional hearings held in connection with these bills suggested that the language of the bills was specific and limited and would "merely" prevent unregistered practitioners from holding themselves out as patent attorneys.<sup>14</sup>

Were one to follow appellant's legislative history approach, one would necessarily have to conclude, in light of the testimony of such key witnesses, that the Cramton Bills would not have covered appellant's activities, even though appellant's counsel concedes they would have.

Still further evidence is available to demonstrate the lack of value in historical materials of the type relied upon by appellant. On pages 14 and 15 appellant discusses the dialogue between Senators Saltonstall and McCarran on the significance of the Patent Act of 1952<sup>15</sup> which was

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<sup>14</sup> Hearings on H.R. 5811 (the second Cramton Bill) before the House Committee on Patents, 69th Cong., 1st Sess., 1926, p. 4; Hearings on H.R. 5527 (the fourth Cramton Bill) before the House Committee on Patents, 70th Cong., 1st Sess., 1928, pp. 6, 11.

<sup>15</sup> Act of July 19, 1952, c. 950, 66 Stat. 796.

then being considered on the floor of the Senate. In response to a question by Senator Saltonstall as to whether the proposed bill changed the law in any way or only codified the present patent laws, Senator McCarran responded "It codifies the present patent laws." While the clear implication in this response was that no substantive change had been made in the law, the undisputed fact (and this is admitted by appellant on pages 13 and 14 of her brief) is that there were a number of substantive changes in the law brought about by the Patent Act of 1952, some of them substantial.

It is to be further noted that many of the statements relied upon by appellant in support of her position are of questionable value to her case in any event. Thus, in the statement by Commissioner Coe which is reproduced at page 18 of appellant's brief, the Commissioner, in the course of explaining the purpose of one of the bills leading to 35 U.S.C. 11(a), stated:

\* \* \* At present, numerous persons who have either been disbarred from practicing before the Patent Office or who have never been enrolled to practice there before, advertise themselves as patent attorneys, *solicit patent business, and otherwise engage in the unauthorized practice before the Patent Office.* \* \* \* (Emphasis supplied)

A similar statement appears in the Committee Report reproduced on page 21 of appellant's brief to which Senator McAdoo referred during his colloquy with Senator King on S. 477. His statement is hardly consistent with the restriction of the statutory language to cover only those holding themselves out as recognized to practice before the Patent Office (as to non-disbarred practitioners).

Similarly, the statement by Commissioner Coe (Hull Bf. 18) to the effect that H.R. 6117 (74th Cong., 1st Sess., 1935) was "not as sweeping as the familiar Crampton (sic)

bills often introduced into Congress heretofore" does not mean that the type of activity engaged in by appellant was not to be covered by the language about which the Commissioner was testifying since a number of specific provisions of the Cramton bills unrelated to the statutory language of the present case had not been carried forward into such bill (or into 35 U.S.C. 11(a)). See "*Soliciting Patent Business: Unauthorized, Unethical, or Unimpeachable?*", by David S. Urey, American Bar Association Unauthorized Practice News, Spring 1966, Vol. No. 1, pages 24-47 at 28. Quite obviously it could have been such deleted provisions to which the "not as sweeping" remarks were directed.

In addition to the foregoing, *amicus* submits that significant questions are left unanswered in appellant's brief about the very legislative history upon which she so heavily relies. It will be recalled (see particularly page 19 of appellant's brief) that it is appellant's contention that the predecessor of 35 U.S.C. 33 [35 U.S.C. 11(a)] treated two groups of persons in a distinctly different manner: (1) disbarred practitioners could neither represent nor assist persons in their business before the Patent Office; and (2) practitioners who were simply not registered were merely proscribed from holding themselves out as "authorized to represent applicants" in any business before the Patent Office (which appellant contends is equivalent to the holding out of recognition to practice before the Patent Office). It is appellant's further contention (Hull Bf. 13-15) that 35 U.S.C. 33 is merely a codification of 35 U.S.C. 11(a) and that no substantive change in the language of the former (at least insofar as this case is concerned) was intended by Congress.

A comparison of the language of 35 U.S.C. 33 with the predecessor statute 35 U.S.C. 11(a) demonstrates the many questions raised by such an argument. In the first place, 35 U.S.C. 33 does not provide separate treatment for dis-

barred practitioners and for those who are not so disbarred but provides single and uniform treatment for all those "not being recognized to practice before the Patent Office" as to the recited proscribed acts. If, as appellant states, no change was intended by Congress in its transition from the language of 35 U.S.C. 11(a) to that in 35 U.S.C. 33, it is difficult to understand why the separate treatment between the two groups of persons was eliminated and new phrasing employed.

Furthermore, it must be noted that 35 U.S.C. 33 was first introduced into Congress as H.R. 9133, 81st Cong., 2d Sess., July 17, 1950, as follows:

"Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, shall be fined not more than \$1,000."

The following year, Section 33 was reintroduced as H.R. 3760 (82nd Cong., 1st Sess.) on April 18, 1951, in its present form. The sole distinction between the two provisions in H.R. 9133 and H.R. 3760 was that the latter added the additional phrase "or as being qualified to prepare and prosecute applications for patent" (the very language under which appellant was convicted). Since no explanation of this change appears in the legislative history, it is impossible to state with absolute certainty why the change was made. All that can be said is that it seems highly probable that the addition of the language in question was not performed as a mere exercise in tautology but was done for the purpose of providing some additional meaning to the proposed statutory language. This probability is diametrically opposed to the position advanced by appellant which is that the phrase "or as being qualified to prepare and prosecute applications for patent" carries the same meaning as the immediately preceding phrase relating to recognition to practice before the Patent Office.

It is on the basis of the foregoing that *amicus* submits that resort to the legislative history surrounding the enactment of 35 U.S.C. 33 is anything but helpful. Far from resolving any doubt, which appellant seeks to read into the statutory language, resort to such legislative history creates such doubt at the very least and is an exercise in futility at most.

**D. An Interpretation of 35 U.S.C. 33 to Cover Only the Holding Out of Recognition to Practice Before the Patent Office Would Lead to Absurd Results**

There is still another and very compelling reason as to why this Court should not construe the language of 35 U.S.C. 33 as being directed solely to the act of holding out that one is recognized to practice before the Patent Office (which is, as previously noted, the essence of appellant's position). And that reason is that such an interpretation would lead to absurd results.

It would in the first instance restrict the statutory coverage to what is essentially a non-existing evil since there are few, if any, practitioners today who attempt to deceive inventors by holding themselves out as being registered to practice before the Patent Office when they are not. This no doubt results in part from the language of 35 U.S.C. 33 and further from the fact that such a person would not (because of the restrictive Patent Office regulations restricting those who may practice before the Office) be able to appear before the Office in his own name. It would accordingly avail him but little to hold himself out as though he were recognized to practice before the Patent Office since he could not fulfill his commitment to a prospective client.

More importantly, the interpretation sought by appellant would give appellant and others similarly situated completely free rein to prepare and prosecute patent applications (so long as it was ostensibly done by the inventor

*pro se*), to solicit business by any and all means<sup>16</sup> and to otherwise perform any and all services for inventors so long as they refrain from indicating that they are registered to practice before the Patent Office. And they would be able to do this unfettered by any restraint imposed by the Patent Office (since the Patent Office regards itself as being limited by the language of 35 U.S.C. 31 to prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing applicants or other parties before the Patent Office; see Tr. 35, 36, 38, 39) or by the Government generally (since 35 U.S.C. 33 would be sterilized under appellant's theory of statutory construction).

Adopting appellant's view we would be left to conclude that while Congress has given the Commissioner of Patents authority to promulgate elaborate rules carefully circumscribing the right to practice before the Patent Office and limiting that right only to people who have demonstrated the requisite qualifications (in the sense of know-how) and control of their conduct once they are admitted, Congress nevertheless intended to permit anyone who either declined to comply with the Commissioner's regulations or who was incapable of doing so to do indirectly what he could not do directly.

The Court need not go beyond the present record to ascertain the consequences of such an interpretation of 35 U.S.C. 33. Appellant's typical response to inquiries directed to her requesting information regarding the service she advertises in nationally circulated magazines is represented by Government exhibit 7A. In the third paragraph of this letter there is a not-too-cleverly veiled suggestion that if her prospective client deals with a registered patent attorney, the patent attorney will tend to keep him in the dark as to the exact status of his application, a result

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<sup>16</sup> Including advertising prohibited by Patent Office Rule 345; 37 CFR 1.345.

which purportedly would not be obtained if he filed and prosecuted the application *pro se* and used the services of appellant to prepare all the necessary documents. Needless to say, this representation is on its face misleading.<sup>17</sup>

In the next paragraph of the letter, appellant expressly states that she employs for the purpose of preparing patent applications "only graduate engineers \* \* \* who have had at least 15 years' experience as Patent Examiners in the United States Patent Office". During the trial, one Diane Frankowski, a former secretary for appellant, testified that the only person she knew of who prepared patent applications for appellant was one Joseph Evans. (Tr. 49, 50) Mr. Evans, on the other hand, acknowledged not only that he had never been registered with the Patent Office (Tr. 62) but that he took the examination for registration before the Patent Office and failed it (Tr. 62, 63); that he had never attended college (Tr. 65); and that he had a mechanical engineer's license obtained from the state of Louisiana not by examination but based on what he referred to as "thirty-some years of record of (his) experience" (Tr. 66). Since it was also stipulated by the Government and counsel for appellant that Mr. Evans had never been employed by the Patent Office, as a patent examiner or otherwise (Tr. 110), it is quite clear that the aforementioned representation of appellant (which presumably was used to induce potential clients to use the services of appellant) was somewhat less than truthful.

Other examples could be given of the evils inherent in permitting a person such as appellant to represent the affairs of unsuspecting inventors without restriction of any type. And yet this would be the necessary consequence of accepting appellant's contention that the only activity proscribed by 35 U.S.C. 33 relates to the holding out of

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<sup>17</sup> Any registered patent attorney or agent who fails to keep his client fully informed is acting improperly. Patent Office Rule 344; 37 CFR 1.344.

recognition to practice before the Patent Office. It stretches credulity to believe that Congress intended such an absurd state of affairs.

## VII. CONCLUSION

In the foregoing portion of this brief, *amicus* has attempted to demonstrate that the language of 35 U.S.C. 33 is clear and unambiguous and prevents appellant and others similarly situated from holding themselves out as qualified (in the sense of having the "know-how") to prepare or prosecute patent applications. In advancing this position, *amicus* does not mean to suggest that compliance with the statutory scheme (including the formal recognition to practice before the Patent Office) will assure the public that those complying will possess such know-how, any more than the lawyer's passing of a bar exam or the doctor's passing of his national boards assures his competence. For it is not at all material whether in fact appellant or other non-registered practitioners are *in fact* competent or not. The only real point to be made is that Congress has seen fit to *minimize* the likelihood that incompetents will represent inventors in their attempts to secure patent protection and to assure that only those complying with defined standards of conduct may continue to do so by insisting upon recognition by the Patent Office as a condition precedent to such representation.

For the reasons set forth above, *amicus* associations submit that this Court should affirm appellant's conviction on the ground that her activities have violated the clear and unambiguous provisions of 35 U.S.C. 33.

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